

# **PROPOSED AMENDMENTS TO THE ORGANIC ACT OF THE TERRITORY OF HAWAII**

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## **HEARINGS**

**BEFORE THE**

## **COMMITTEE ON THE TERRITORIES**

**HOUSE OF REPRESENTATIVES**

**SIXTY-SIXTH CONGRESS**

**SECOND SESSION**

**ON THE**

**REHABILITATION AND COLONIZATION OF HAWAIIANS AND OTHER  
PROPOSED AMENDMENTS TO THE ORGANIC ACT OF THE TERRI-  
TORY OF HAWAII AND ON THE PROPOSED TRANSFER OF THE  
BUILDINGS OF THE FEDERAL LEPROSY INVESTIGATION  
STATION AT KALAWAO ON THE ISLAND OF MOLOKAI,  
TO THE TERRITORY OF HAWAII**

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**FEBRUARY 3, 4, 5, 7, AND 10, 1920**



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**COMMITTEE ON THE TERRITORIES.**  
**HOUSE OF REPRESENTATIVES, UNITED STATES.**  
**SIXTY-SIXTH CONGRESS.**

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**CHARLES F. CURRY, Jr., *Clerk*.**

## PROPOSED AMENDMENTS TO THE ORGANIC ACT OF THE TERRITORY OF HAWAII.

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COMMITTEE ON TERRITORIES,  
HOUSE OF REPRESENTATIVES,  
*Washington, D. C., Tuesday, February 3, 1920.*

The committee met at 11 o'clock a. m., Hon. Charles F. Curry (chairman) presiding.

Present: Messrs. Johnson, Dowell, Brooks, Strong, Monahan, Weaver, Lankford, Davey, Humphreys, Almon, and Delegate Kalaniana'ole.

The CHAIRMAN. The committee will come to order. You will find on the table in front of you a pamphlet prepared by the Hawaiian legislative commission containing the resolutions of the legislature of the Territory of Hawaii with reference to legislation that they desire enacted by the Congress, together with statements as to why such legislation should be enacted and also the tentative draft of the bill covering the points. I do not think the bill is quite satisfactory to the commission. We have with us a commission from the island, composed of the governor, Hon. C. J. McCarthy, their attorney general, Hon. Harry Irwin, Hon. John H. Wise, and Hon. Robert W. Shingle, territorial senators, and Hon. Henry J. Lyman and Hon. William T. Rawlins, representatives in the territorial legislature; also the Delegate from Hawaii, Hon. J. Kuhio Kalaniana'ole. We will be glad to have a general statement from the governor.

### STATEMENT OF HON. C. J. MCCARTHY, GOVERNOR OF HAWAII.

Gov. MCCARTHY. I think the bill is satisfactory to the delegation. If you will allow me, Mr. Chairman, since we have arrived in Washington, we understand that any matter regarding an appropriation would not be likely to receive favorable action, so that as far as the delegation is concerned, we might as well eliminate those portions referring to increased appropriations and have them taken up as a separate measure.

The CHAIRMAN. What are those increased appropriations?

Gov. MCCARTHY. An increase in the appropriations for salaries of the governor and judges and certain officials appointed by the President of the United States serving in the Territory of Hawaii.

The CHAIRMAN. Have you in here an appropriation for the building of roads?

Gov. MCCARTHY. No; that does not come in that bill, because that is a separate proposition.

Mr. DOWELL. Is that the only appropriation that you had in mind, the increase of salaries?

Gov. McCARTHY. Yes, and the salaries of these officials are provided for in the organic act. The bill that we have here is an amendment to the organic act amending section 73 relating to the land and the salaries and then section 55, which refers to the borrowing capacity, and that was all treated in one bill amending the organic act.

Mr. KALANIANA'OLE. We have many bills that have been already introduced and enacted favorably by the legislature of Hawaii, which the commission has within that brief. There are many other matters, including borrowing, and also we have a rehabilitation bill.

The CHAIRMAN. Of course, it is all right to introduce separate bills, but it is going to be hard to get those bills considered. The only way that we will be able to get these bills considered by Congress will be by a special rule from the Rules Committee, probably. I do not think the Committee of Territories will be called again until adjournment, and I can not go to the Rules Committee and ask them for a rule for half a dozen Hawaiian bills. I might go for a couple of bills and maybe they would grant it for a couple of bills, and if I went to the Rules Committee this committee would have to approve the request. The Rules Committee will not give a rule just for asking for it. We have got to go there and say that the Committee on Territories is behind this proposition, and we think it is right. We can not get a hearing before Congress, so that we can have this matter in which the Territory of Hawaii is very vitally interested brought up without a rule. Under those circumstances we might get a rule. Then we can get the bills considered by the House, and probably passed. But you can see if you introduce a half a dozen bills that you are not going to have a half a dozen bills considered because it is an impossibility for this committee to induce the Committee on Rules to give that many special rules for one Territory. Now, then, why don't you get all of these bills, which pretty nearly all refer to the organic act, even your rehabilitation bill, refers to the organic act—that is the most important bill that you have—why do you not prepare one bill and get it into shape so that we can go before the Rules Committee when the time comes and ask for a rule for a bill that you want?

Mr. DOWELL. Let that be an amendment to the organic act.

The CHAIRMAN. Let it be an amendment to the organic act. I do not expect that you are going to get everything you ask for. I never got all that I asked for. Probably you could get all you ask for from this committee but if you did you would be apt to have a fight on the floor of the House. Find out what you want and get that in shape in the form of a bill, introduce it, and have it referred to the committee, and then give us a chance after we have heard you to go ahead and see what we can do with it. But if you introduce a rehabilitation bill and another bill for roads and another bill for salaries and for this and for that, how are you going to get them considered?

Mr. KALANIANA'OLE. Mr. Chairman, the purpose is to get the facts before the committee on record. I do not say that we may be able to get it out but while the delegation are here they will never have another such opportunity to go before Congress again, and while they are here, I would like to give the committee all that they knew of any conditions in the Territory so that it will be on record.

The CHAIRMAN. They will be given every opportunity and all the time they want to explain the needs of the Territory and the reasons for the legislation asked for and they will be listened to sympathetic-



ally by this committee, I am sure. That is what I am talking about. I am talking about legislation. You might talk your head off but that does not get you anything. To get anything you have got to have a bill enacted into law and you can not have a half a dozen bills enacted into law at this session of Congress. They are going to try and pass the appropriation bills and the necessary readjustment bills from a war to a peace basis and adjourn. Democrats want to adjourn; Republicans want to adjourn. Some Democrats and some Republicans do not want to adjourn at all. They are better off here than they would be at home. But most of them want to adjourn.

Mr. STRONG. Those who do not want to adjourn must have cheap apartments here.

The CHAIRMAN. You might as well recognize the fact. Draw these half a dozen bills that you want and then put them into one bill.

Mr. SHINGLE. I take it that the Chairman means make an omnibus bill.

The CHAIRMAN. Certainly. As far as salaries of officers is concerned, it is not a very good time to increase salaries. I do not say that they ought not to be increased; they should be. But three or four years from now a dollar is going to be worth about a dollar and a half. The Governor of the Territory draws a salary of \$7,000 a year. There are only five States in the Union that pay so large a salary to the governors. You have about 250,000 population. Now, there are good reasons why the salary of the Governor of Hawaii should be \$10,000 a year. He is out in the middle of the Pacific and whenever any person of prominence from China or Japan or England or a warship from any part of the world stops in there he is telegraphed by a Cabinet officer to receive these people and entertain them. It costs him money. It seems to me it would be easier to have a contingent fund provided for than it would be to increase the salary. There are other things that you want. There is the proposition of a two years' residence in the Territory as a qualification for appointment to office. That is all right. There ought to be no objection to that. You have a peculiar civilization and a peculiar population situation.

The men who are appointed to office ought to understand your people and their habits and customs and mode of living and their employments. Of course, a residence qualification ought not to apply to the Federal judiciary but when it comes to the executive and municipal officers they ought to have established a territorial residence so as to have become acquainted with the people and their customs. There are many things that you want that you ought to have. There are some things you are asking for that in my judgment you do not want yourself. Maybe I am mistaken about it. I am going to find out before I get through with you. I am going to ask you whether or not you want them. While there is nothing in the way of a bill before the committee, which has been introduced, we have unofficially this pamphlet before us. If there is no objection we will hear from Gov. McCarthy in regard to these matters.

Mr. DOWELL. I move that a subcommittee of five or seven be appointed by the chair, with the chairman, of course, acting with it as chairman, to take these hearings and report to the full committee on the entire subject matter of this proposed legislation.

(The motion was adopted unanimously.)

The CHAIRMAN. I will appoint on that committee as far as I can those who have visited the islands and spent some time there: Representatives Johnson, Dowell, Strong, Watkins, Weaver, Humphreys, and with myself that will be seven.

If you wish to make a general statement at this time to the committee, Governor, we will be glad to hear you.

Gov. McCARTHY. Mr. Chairman and gentlemen of the committee, the primary object of this commission coming here is to present to you certain amendments to our organic act, the chief one being made to section 73. Section 73 was amended in 1910 on the recommendation of the Territorial legislature, which held a special session November, 1909, at which was adopted a concurrent resolution, recommending Congress to amend that particular section of the law. We have been running along for about 10 years under that land law and experience has proven that there has developed certain kinks in it and our legislature at the 1919 session passed certain resolutions asking for amendments. There have been resolutions asking for amendments to section 26, which refers to the salary of the members of the legislature, section 55, which governs the issuance of bonds by the Territory. According to the law as it exists at present, the bonded indebtedness of the Territory can not exceed 7 per cent of the assessed value of the property and no more than 1 per cent in a single year. The Territory is now bonded and the legislature has passed acts increasing the bonded indebtedness to pretty near the limit, but Honolulu is really the cross roads of the Pacific and we feel that with the large merchant marine built up by the United States and that the Pacific is to be the great center of trade and trade routes, and Hawaii being so situated that it will be profitable and desirable for these ships to call at our port, it then becomes necessary for the Territory to put this port in condition to give quick dispatch to the vessels. For that reason it will be necessary for us to build more wharves and improve our facilities. As the income of the Territory is insufficient to carry on these works through current funds it becomes necessary for us to borrow, so that we have asked Congress to amend section 55, increasing the maximum indebtedness from 7 per cent to 10 per cent. I might state in passing that the Territory can not issue any bonds without the approval of the President of the United States, and one of the matters that I personally have taken up with the Department of the Interior is the request for the President to approve the issue of \$2,400,000 public-improvement bonds, a large part of which will be used for harbor development.

Right here I might say that according to this section 55 the counties are permitted to issue bonds to the limit of 3 per cent of the assessed value of the property within a county. Up to the present time the counties have not issued any bonds, for the reason that in holding bond elections the people do not have confidence in the several boards of supervisors. I might say right here that there is more politics to the square inch in Hawaii than any part of the United States, and the outs will not trust the ins to spend any bond money, and this is in regard to county government; and then there are some people that are always doubtful, so that the result is that it is impossible to pass a county bond issue, so that up to the present time the counties have not issued a single bond. That just reminds

me of something. The method pursued in financing the different counties in public improvements is for the territorial legislature in a bond act or loan act to include a county section. In that section there is appropriated from loan funds certain items recommended by the several counties. According to the provision of the act the counties have deducted from their tax money on the first annual date of the bonds and every annual date thereafter a sufficient sum of money which compounded semiannually at the rate of interest in the bond will at the maturity of the bond produce sufficient money to wipe it out. There is always deducted the interest. I might say right here that the property taxes and all taxes are collected by the territorial officials at the end of each month; the counties are paid on the last day of each month the taxes that we collect for them, and May 15 and November 15 of each year are the delinquent periods, so that at the end of May and at the end of November there is in the territorial treasury a large amount of tax money belonging to the counties, and it is for those periods that the treasurer of the Territory deducts from the county income the money necessary for these sinking funds.

Now, to get back to this bond proposition. Nearly 50 per cent of the bonded indebtedness of the Territory is money that was borrowed for the counties. That is, the Territory has been loaning its credit to the counties to the extent of 50 per cent of the present bonded indebtedness. Now that the Territory is up against it in regard to this important harbor improvement, it becomes necessary for the Territory to have its limit increased. It strikes me that when Congress passed this section 55 that it intended the Territory to have a bonded limit of 10 per cent, but they divided it 7 per cent to the Territory and 3 per cent to the county. As the counties have not been able to utilize their credit, it strikes me that it would be desirable to amend the act and take away from the counties their bonding privilege and give it to the Territory.

The CHAIRMAN. Why do you want to take away the county privilege? Why don't you just add to the territorial limit?

Gov. McCARTHY. There is one proposition and that is in regard to the bonds. Our bonds are accepted in many of the States for investment in savings-banks deposits. New York and certain other States have placed a limit to this extent that they will not receive, will not permit the investment in State or municipal bonds where the bonding limit of that State and municipality exceeds 7 per cent.

The CHAIRMAN. What is the assessed valuation?

Gov. McCARTHY. The last assessed valuation was in round figures \$250,000,000.

The CHAIRMAN. What is your bonded indebtedness?

Mr. SHINGLE. \$17,500,000 is the amount based upon 7 per cent. The governor's proposition now is for 10 per cent.

Mr. HUMPHREYS. You owe about \$11,000,000, so it would be about \$14,000,000 plus that you could borrow.

The CHAIRMAN. It would be the difference between the \$11,000,000 and the \$14,000,000.

Mr. HUMPHREYS. The figure that you have read is what you have allotted to the counties?

Gov. McCARTHY. Oh, yes.

Mr. DOWELL. Do I understand you that none of the counties have availed themselves of the opportunity to issue bonds?

Gov. McCARTHY. They have never issued bonds. They have had bond elections, but every time there was a bond election the bonds failed to carry.

Mr. DOWELL. You spoke of repealing that part of the law. Will it not be necessary under some circumstances for counties to issue bonds in order to make improvements that are within the county and not outside.

Gov. McCARTHY. It is necessary to say that the way we have been handling it in the past is that when the legislature meets they insert a county section and then appropriate money for county but use our territorial credit. Another reason we use territorial credit is that the Territory can sell it at a lower rate of interest than the county would and do it at a premium. We sold a million 4½ per cent bonds last October at 102 and a fraction.

Mr. DOWELL. But assuming that the Territory did not want to make improvements that the county really had to have, the bonds would not be useful, of course, for the thing for which the county was in need. That is what I am getting at.

Gov. McCARTHY. I see the point. I am not strong on repealing the county privilege. I am just putting it up to you folks as an argument as one of the ways to permit us to get the advantage of this thing.

The CHAIRMAN. I do not think 10 per cent generally and 3 per cent for the county is excessive. In most places it is 15 per cent and they raised it in some places to 20 per cent, if the money is used for a legitimate purpose like building roads or construction of wharves and matters of that kind, in business; it is all right if it is not frittered away.

Mr. DOWELL. I can see some instances where the county might be very greatly in need of a special bond issue for some specific purpose.

The CHAIRMAN. You might need the 3 per cent for roads.

Gov. McCARTHY. For instance, in a county it might be for roads and hospitals. As I say, I do not object to the counties retaining that privilege. The only thing is that it has been so hard in the past for the counties to get by with it and get the voters in the county to approve one of the bond issues.

The CHAIRMAN. I am glad of it. The country is going bond crazy.

Gov. McCARTHY. They are anxious for the improvements, and if an amount is put in a territorial land bill then concerning the public works and the governor has something to say about spending all that money and the taxpayers and voters of the county do not like to trust their county officials with that authority; but if the territorial officers have supervision over them they are satisfied, so, therefore, they get the money just the same by inserting it.

Mr. STRONG. Why can not you amend your law so as to provide that some member of your territorial government shall have concurrent jurisdiction with the spending of the money in the counties.

Mr. IRWIN. We do that now.

The CHAIRMAN. I think we had better leave that in the law and increase your tax.

Mr. STRONG. Have you raised the yearly assessment of 1 per cent?

Gov. McCARTHY. No; we let that go, but just simply the maximum limit.

Mr. MONAHAN. How many counties have you?

Gov. McCARTHY. There were four counties, but there are five really. The leper settlement at Molokai forms a fifth county, the county of Kalawao. In some instances it is under the jurisdiction of the city and county of Honolulu, which comprises the Island of Oahu; in other cases it is under the board of health, but it is just a little peninsula which we call a county, the county of Kalawao in which is located the Molokai leper settlement.

There are four counties, including the city and county of Honolulu, which takes in the whole of the island of Oahu, and another little island about 5 miles away. Then there is the county of Maui and the county of Kauai. The county of Hawaii takes in the large island of Hawaii.

The CHAIRMAN. While you are on that subject now, you brought in this proposition of the leper settlement, and I would like to have you explain to the committee your reasons for desiring the leper buildings taken out from under the control of the United States Government and put under the control of the territorial government?

Gov. McCARTHY. The leper settlement has always been under the direction of the territorial government. The United States Government has had nothing to do with it except in this respect. The United States Government built a leprosarium at the settlement of Kalawao for the treatment of lepers. They spent a whole lot of money and put up a building there in a bleak and dreary section of the island. I do not believe that there has ever been more than seven patients in this building at one time. The native Hawaiian patients will not go there. The building is going to rack and ruin, and it is absolutely useless. Among other things that the commission had was a resolution passed by the legislature asking the proper authority of the department or the Federal Government to give us these buildings and we would use that material in another part of the settlement. Of course, the improvements can not be used for anything else, because there have been lepers there in my judgment, and then in Honolulu we have a receiving station. In the receiving station there are quarters for the United States physician. At the present time the United States physician is also the territorial physician and is in charge of this settlement. They treat these patients there for a certain length of time, and some of them respond to the treatment. After being there for a certain period if they fail to respond to the treatment then they are sent over to the settlement at Molokai by the United States Government.

Mr. DOWELL. Those are all the incurables?

Gov. McCARTHY. Yes, sir.

Mr. RAWLINS. That is on Molokai. If at the end of a year he shows any improvement or response to treatment he is ready to be re-examined. He nominates a physician, the board of health nominates a physician, and they nominate a third physician, and he is taken to Honolulu, and if declared free from the disease he is released, and if not he goes back to the settlement.

Mr. MONAHAN. What per cent of the lepers respond to treatment?

Mr. RAWLINS. Not very many.

Mr. IRWIN. There have been approximately 35 patients paroled from the receiving station as cured after having been there for periods from six months to a year. Those are nearly all patients who were

gathered in in the very early stages of the disease and who responded to treatment.

Mr. DOWELL. Do you get that great a per cent every year?

Mr. IRWIN. No; that is by reason of the new chaulmoogra oil treatment that has been discovered, which has been very beneficial.

Mr. DOWELL. How many patients are there?

Mr. IRWIN. In the Honolulu receiving station the number of patients will run from 100 to 200; on the island of Molokai it is 608.

Mr. MONAHAN. Is that an increase or a decrease?

Mr. IRWIN. A decrease.

Gov. McCARTHY. I remember when they had 1,200 lepers in Molokai.

Mr. DOWELL. What is the average life of one who has been sent to the island?

Gov. McCARTHY. Most of them died from other diseases than leprosy.

Mr. DOWELL. Is that correct?

Mr. RAWLINS. Yes, sir. Some of them have been there from 25 to 30 years, and the majority of the deaths are from pneumonia and dysentery.

Gov. McCARTHY. One old man, named Hutchinson, was there prior to 1890, and I was there in 1894 with a legislative committee which visited the settlement and one old man, Mr. Hutchinson, was there then as a patient.

Mr. KALANIANA'OLE. Who is that chap who was there for 30 years and they found out he was not a leper; a good many of them have been there for years who were not lepers.

Gov. McCARTHY. In 1909 I was there with a legislative committee and some of the lepers asked one of our senators to have them sent down to Honolulu for reexamination, and they sent down about 80 of them, and 57 per cent of them were found upon pathological examination that they did not have leprosy and never did have it. You see, originally, the way that they examined them the patient appointed a physician and the Government appointed one, and the two physicians appointed the third. They examined the patient and diagnosed the case and reported it is leprosy. Some of the symptoms of leprosy are the symptoms of other diseases and people were sent over to the settlement. In 1899 we had the bubonic plague introduced there from the Orient, and just about that time there was a German doctor came out with a lot of immigrants who had all the instruments for bacteriological examination, and they began to make slides. So when these patients at Molokai were bacteriologically examined it was found that they did not have leprosy. One of them was an old negro.

The CHAIRMAN. What was the disease that they had?

Gov. McCARTHY. It may have been syphilis or some other skin disease, such as scrofula.

The CHAIRMAN. Any doctor that could not tell the difference between them—

Gov. McCARTHY (interposing). I know a darky who was there for 14 years and it finally turned out he did not have leprosy but when they wanted him to leave the settlement he did not want to go. He was well treated, had a home, the Government supplied him with everything, and he did not have to work, and he was happy and

contented. He has been there for 14 years, living among lepers for 14 years, and he did not contract the disease.

The CHAIRMAN. Is not the reason really that you want to have the entire control of this proposition based on this fact, that you think that you can handle it better than the United States Government?

Gov. McCARTHY. We think we can. We have been controlling it, and at the same time it is home rule and we are right on the ground and we know just how to handle this thing and it is a hard matter to handle it from five or six thousand miles away, from Washington.

The CHAIRMAN. Don't the Washington authorities have doctors out there to take care of it?

Gov. McCARTHY. There is Dr. McDonald now at the receiving station. He gets a salary from the Federal Government.

Mr. IRWIN. He gets a small salary from the Federal Government.

Gov. McCARTHY. But we pay the bulk of the salary.

Mr. KALANIANA'OLE. What does it cost to run that?

Gov. McCARTHY. The board of health says it costs about 25 per cent of the total revenue of the territory.

The CHAIRMAN. Would there be any danger if you folks had charge of that of turning a lot of those lepers loose for not having leprosy?

Gov. McCARTHY. We have had segregation there, I do not know how long before I came there and I have been there 39 years, and we started this segregation ourselves. We are paying out of our funds an immense lot of money every year for these leper settlements. I think I have a copy of the assessment list here which will show how much it cost us.

The CHAIRMAN. Of course, it has been handled well either by the Federal Government or by you or by both, because there is not more than half of the lepers in the island that there was 15 years ago.

Gov. McCARTHY. Because they have died off.

The CHAIRMAN. They have died off and the disease has not spread.

Mr. DOWELL. According to this report, Mr. Chairman, there are just a few more than there were in 1908. It has increased just a slight percentage.

Mr. STRONG. The delegate suggests that they have entire charge now but that these buildings that the Government put up there were in an improper place in the island. What they are asking is to have charge of these buildings.

Mr. RAWLINS. I think the impression that the United States Government has charge of it is wrong. We have entire charge of the leper settlements and requested the Federal Government in order to study the disease and to make an appropriation to have several buildings erected on the island of Molokai and appointed first Dr. Brinkerhoff, and he afterwards died and Dr. McCoy took it up. These buildings were built in a bleak location for a leper settlement where there are strong winds and it is cold and patients will not go into the place and the buildings are standing there for several years without being occupied except there is a caretaker there. Our idea is to ask the Federal Government or the proper department here to turn these buildings over to the Territory so that they may be removed and used in other portions of the settlement for purposes of housing those who are inmates and making repairs to other buildings. The Federal Government has no control over the settlement

at all but at the receiving station at Honolulu where they have a laboratory for the study of the disease, Dr. McDonald, who stays there takes up the treatments that are known to him and treats these lepers and keeps a report of the response to the treatment.

The CHAIRMAN. The legislation that you want would not interfere at all with scientific investigations of leprosy that the United States Government is at present carrying on?

Mr. RAWLINS. No, sir.

Mr. HUMPHREYS. What does the Public Health Service think of the proposition?

Mr. RAWLINS. Turning over these buildings to us.

Gov. McCARTHY. The attorney general, Mr. Irwin, and myself, called on the Public Health Service the other day, and Dr. Perry, I think his name is, took the matter under advisement and said he would take it up with the solicitor of the department and find out if they could turn them over to the Territory without any congressional action. In the Revised Statutes there is a provision that before the United States will expend this money originally in the building, the Territory should deed over to it a certain amount of land, and that was done, so the United States owns the land on which these buildings are located, but I did not quite understand you when you first spoke to me on this subject. I did not understand that you believed that the United States was paying and had control over the situation.

The CHAIRMAN. I did not have any such idea except over this station where they study the disease.

Gov. McCARTHY. That is the idea.

The CHAIRMAN. You want to take that over from them. Now, I understand, of course, that that does not interfere with the United States Government studying the disease because they are studying the disease at Honolulu.

Mr. KALANIANA'OLE. As a matter of fact, the people of the territory of Hawaii had never consented to the Federal Government having control of our leper settlement notwithstanding the fact that it is a burden on the island?

Gov. McCARTHY. No, sir.

Mr. DOWELL. How are these patients admitted to the institution?

Gov. McCARTHY. Throughout the islands in all the districts we have Government physicians and board of health inspectors. We have a law that is known as the suspect law. If any resident of the island has reason to believe that any person that he sees is a leper or you suspect him to be a leper, it is your duty to report it to the authorities. The suspect is taken up and sent down to Honolulu to this Kalihi receiving station. He is there treated at this receiving station where the territory has complete quarters for the United States bacteriologist. Our physician studies the case and the United States physician studies it. It happens just now that the United States physician is also the territorial physician.

Mr. DOWELL. Are any of these patients from the States?

Gov. McCARTHY. No, sir. We only treat our own people. One time there was an agitation here to make Hawaii the dumping ground for the whole country. We did not want it. This is just the same as if the State of California had a certain disease and many cases of a certain disease and the State itself appropriated money for the care and maintenance and segregation and eradication of the disease, and



that disease being something which interested all the people of the United States the United States Government had made an appropriation providing for the expenses of somebody to study it with the State authorities. We are looking after this ourselves. The appropriation that was made by the last legislature for the leprosy alone amounts to over \$600,000.

The CHAIRMAN. Can you ascertain whether or not, the United States Government having really abandoned this place, it reverts back to the Territory without legislative action?

Gov. McCARTHY. I take it that they would have to turn it over to us. We have asked them and put it before the department officer, the Attorney General and myself, and they have it under advisement and have taken it up with the solicitor of the department. We expect to go there to-day or to-morrow to get the answer.

The CHAIRMAN. Then you can let us know in time whether it is necessary to have legislation along that line.

Gov. McCARTHY. Yes, sir.

Mr. ALMON. About what is the extent and value or cost of these buildings?

Gov. McCARTHY. It may be \$150,000; they are just big barracks along the seashore. These buildings were built in what was an old original settlement on the island to the windward side of the peninsula. The territorial government built one on the opposite side of this peninsula and that is where the administrative building is and all the new work is done on the other side, and why they went over there, I do not know.

Mr. ALMON. To what extent have they been used?

Gov. McCARTHY. There never has been more than 7 patients there at any time. Most of the time there is nobody there.

Mr. ALMON. How many are they prepared to take?

Mr. IRWIN. I should say easily 100 at Molokai, probably more.

Mr. ALMON. How long since they discontinued the use of them entirely?

Gov. McCARTHY. It was completed about 1909. I was over there and they were just washing the paint off the windows. The buildings were practically completed. I do not think they used it more than a month or so.

Mr. IRWIN. It has been discontinued entirely for five years. They are not using the buildings at all. There is a man and his wife there as caretakers now to see that the property is not destroyed. They simply keep the instruments and the refrigeration plant oiled up and greased so that it does not deteriorate.

The CHAIRMAN. It seems probable to me that we will not have to legislate on that subject.

Gov. McCARTHY. I doubt it.

The CHAIRMAN. What is the next point you are particularly interested in?

Gov. McCARTHY. You mentioned the matter of roads. We take it that that will not be an amendment to our organic act. It will simply mean that when Congress—we know that we can not get anything out of the present law—and when Congress passes a good roads law and makes appropriations for the highways we feel that Hawaii should be included. The money is divided among the States in the proportion; that is, Congress gives Federal aid to the States in proportion to

the money appropriated by the States, and they have always left Hawaii out of it. We have a roads bill prepared and data on it, but that not being an amendment to the organic act would not really come before the Territory.

In the matter of education, Hawaii spends an immense amount of money every year in the way of education. That will not come before this committee but the committee having another bill in hand. There are several acts providing, for instance, for experimental stations, where the Federal Government helps the States. Hawaii has generally been left out. When these bills are up for consideration by the appropriation committees, we would like to have those committees act on the resolutions adopted by our legislature and which have been sent to you.

Mr. JOHNSON. I would like to say to the Governor and the delegation generally that acting for this committee and in behalf of the delegate and in the interests of the people of Hawaii and the people of Alaska, on almost every occasion when the appropriation bill has reached the floor that has carried any of these plans to give Federal aid to the States, I have endeavored to have the Territories included. I have never been able to see why if we go into a scheme of Federal aid in roads, education, industrial training, or anything else, that our citizens of our Territories are not entitled to the same benefits—if they are benefits.

The CHAIRMAN. I think that they are entitled to it, and I think that the point you raised on the floor when this roads question was up was well taken, but Congress did not think so. They said it was a Territorial matter and should come from the Territories Committee.

Gov. MCCARTHY. I might say right here as a matter of information that the last completed report of the Collector of Internal Revenue which I received before leaving on this trip was for the period ending June 30, 1918, and for that year Hawaii stood thirty-fourth among the 48 States and the two Territories and the District of Columbia in the payment of revenue taxes and income tax and excess war profits. Now, our money that we have paid to the Federal Government in the shape of taxes we feel that is all right. It is all right to turn it over to the Federal Government, but if the Federal Government is aiding the States, why not give Hawaii a chance or a share just the same as the others.

The CHAIRMAN. This committee has always tried to do that, but we have never had the proposition before the committee. The Committee on Public Lands and the Committee on Roads has stated that as Hawaii was a Territory it was a matter for this committee to legislate. I do not think so. I think it ought to go in a general bill. Now, you are here and can straighten that matter out, and if it is necessary for this committee to legislate, have a bill introduced covering the situation, and if it is not necessary have it straightened up with the committee having jurisdiction.

Gov. MCCARTHY. That is the idea, so as to find out where we are at and have the proper committee act.

The CHAIRMAN. This committee is always ready to give you relief. Mr. Johnson, representing the committee on the floor of the House, when this roads bill was up asked that Alaska and Hawaii both be included in the benefits and provisions of that bill.

Mr. DOWELL. That came in as a rider to the post office bill.

Mr. JOHNSON. The last thing for which I made a fight was one of these vocational training propositions under this new plan where the Federal Government meets the States half way. What is to be gained by leaving out Territories?

Mr. KALANIANA'OLE. Speaking on that, the Governor spoke about education. I see no reason why that can not be taken up by the Territorial Committee. Take that vocational bill that came up in the House. Everybody says it does not belong to the Education Committee but should go to the Territories Committee. I introduced the bill meeting the amendments of those that objected.

The CHAIRMAN. Have you a bill introduced now?

Mr. KALANIANA'OLE. I have a resolution here to include it. It seems to me the Territories Committee has jurisdiction of any matter pertaining to Hawaii.

The CHAIRMAN. I believe it has.

Mr. JOHNSON. That is to say, this committee must take every legislation of national nature and offer the same to be passed in Congress in the exact bill to apply to the Territories.

Mr. KALANIANA'OLE. That is what I always get from the other committees, that they have no jurisdiction, that the Territories Committee has jurisdiction.

The CHAIRMAN. Now that the commission is here find out what is necessary, what committee has jurisdiction, and if the Speaker of the House and the chairman of these committees say that this committee has jurisdiction, introduce a bill and have it referred to this committee. If the Speaker and the chairman of the committees say that other committees have jurisdiction introduce a bill and have it referred to those committees.

Mr. KALANIANA'OLE. I took the word of the chairman of the Education Committee and introduced it.

The CHAIRMAN. He does not refer the bill. The Speaker refers the bill. But now you are here straighten it out and find out which committee has jurisdiction, and then we will get to it. What else have you of importance at the present time, Governor?

Gov. McCARTHY. I have covered everything in the bill. Then there is this rehabilitation.

Mr. IRWIN. Have you touched on the amendment to the land laws?

Gov. McCARTHY. I touched on it generally, the amendment to section 73.

The CHAIRMAN. That is the amendment to the land laws of the Territory. I would like to ask you one or two questions about the land laws. Under the law a corporation can only own a thousand acres of land.

Gov. McCARTHY. Yes, sir.

The CHAIRMAN. Now, there are plantations of 10,000, 15,000, and 20,000 acres that are organized along these lines, if I am correctly informed. There may be 5, 10, 15, or 20 men organize a corporation. They have a thousand acres of land as one corporation of which John Doe is chairman. There are 5, 10, 15, or 20 men interested in each one of these corporations. Now, there is another corporation of which Hard Roe is chairman and so on down the line, 5, 10, 15, or 20 men, so that the same men are interested in the 5, 10, 15, or 20 lots of land of a thousand acres each, and while one corporation is only supposed to own and work a thousand acres of land, that corpo-

ration by this rounabout method of interlocking control and ownership owns 20,000 acres, 10,000 acres, or 5,000 acres. It looks to me as though that system was in violation of law, and that it has a tendency to create large sugar holdings and to discourage and make unprofitable the holdings of 10 or 15, or 20 or 40 acres of land as sugar plantations, for this reason. Sugar cane is only valuable where you can get it to the mill. These large plantations each have a mill. Men with 40 acres can not afford to put up a mill. The large plantations can pay him so little for his sugar cane that it does not make it profitable for him to raise sugar. Does not that condition exist in the islands or have you tried to stop it?

Gov. McCARTHY. They have got over this section of the law. There is no doubt about it. They form land companies that will take up a thousand acres—buy a thousand acres—and then each land company, each of these individual land companies, makes either leases of plantations, or in one case several of these small corporations have formed a copartnership or corporation. Whether that thing is according to law or not I do not know, but it has been done. I understand that the present United States district attorney is going to take the matter into court to find out if that is a transgression of the United States law. Attorney General Irwin cabled to his office the other day to find out if the case had been entered as yet, and he had an answer that it had not.

Mr. IRWIN. I would like to say, Mr. Curry, that in my conversation with you I told you that Mr. Huber, the United States attorney, had told me he had filed a case. After leaving you I began to reflect on that, and I sent a cable there to find out about it. I was incorrect. I have gone over this matter with him several times. I know that he is working on it and that he is about ready to file a case. Neither he nor I are entirely sure of what the results will be.

The CHAIRMAN. Are those land companies acting under any advice of Federal officials?

Mr. IRWIN. I am informed that before they proceeded along those lines they asked the opinion of the then United States District Attorney Breckons, and he advised them that they could proceed along those lines.

The CHAIRMAN. If they have his advice, what do you expect to do with them?

Mr. IRWIN. Mr. Rawlins was Mr. Breckons's assistant at that time and may be able to give you more information.

Mr. RAWLINS. Mr. Breckons never passed on that matter at all.

Mr. IRWIN. That is the impression in Honolulu. Whether it is true or not I do not know.

The CHAIRMAN. If they are acting on the authority of a United States district attorney, even though the advice may be illegal, it is going to be pretty hard work for you to convict them of an illegal act.

Mr. IRWIN. The organic act is very specific. It provides that in case of violations of that provision of the law the land is to escheat to the United States of America. Whether they are acting under legal advice or not, if it is a violation of the law, that would be no defense.

The CHAIRMAN. It may not be a defense, but it would probably be accepted as in mitigation of the offense.

Mr. STRONG. You will find that will be their defense if they need one. It always is.

The CHAIRMAN. That is preliminary to your land legislation, that we have to take up later on. What else have you, Governor?

Gov. McCARTHY. That covers about all I have to say. Of course, I did not go into details in regard to the amendments to the land laws, as I supposed that would be taken up with your subcommittee.

The CHAIRMAN. What is the population of Hawaii?

Gov. McCARTHY. The population is 260,000.

The CHAIRMAN. How is it segregated as to nationality of the people?

Gov. McCARTHY. The last official census was 1910. At that time the total population was 191,909, of which 29,099 were Hawaiians; part Hawaiians, 12,485; Portuguese, 22,294; Chinese, 21,698; Japanese, 79,663; Spanish, 1,962; Porto Ricans, 4,828; other Caucasians, 14,684; Filipinos, 8,196. The estimated population for the period ending June 30, 1919, was 263,666.

Mr. JOHNSON. I suggest that those two tables, pages 76 and 77 of the pamphlet, be inserted in the record.

The CHAIRMAN. Yes.

(The tables referred to are as follows:)

APPENDIX 1.—*Showing population statistics.*

[Because various systems of classification were used in past years in compiling these figures of population, blanks occasionally appear in this table opposite certain nationalities for certain years. These nationalities are included, however, under other group headings in the same column.]

Nativity.	1872	1878	1884	1890	1896	1900 <sup>1</sup>	1910
Hawaiians.....	49,044	44,088	40,014	34,436	31,019	29,834	29,099
Part Hawaiians.....	1,487	3,420	4,218	3,186	8,485	7,835	12,485
Caucasians.....						28,533	
Americans.....	889	1,276	2,066	1,928	2,266		
Hawaiian-born foreigners.....	849	947	2,044	7,493	13,733		
British.....	619	883	1,282	1,344	1,538		
Portuguese.....	395	436	9,377	8,602	8,232		22,294
German.....	224	272	1,600	1,434	912		
French.....	88	81	192	70	75		
Chinese.....	1,938	5,916	17,337	15,731	19,382	25,742	21,698
Japanese.....			116	12,360	22,329	61,112	79,663
South Sea Islanders.....			956	588	409	407	
Negroes.....						234	
Norwegians.....			362	227	216		
Other foreigners.....	362	666	416	419	424		
Spanish.....							1,962
Porto Ricans.....							4,828
Other Caucasian.....							14,684
Filipinos.....							8,196
All others.....							
German-Russian.....							
American-British.....							
Army and Navy.....							
Korean.....							
Total.....	53,895	57,985	80,580	90,390	109,020	153,727	191,909

<sup>1</sup> In the census of 1900 Americans are not separated from the other Caucasians (line 3), the place of birth of all being as follows: Hawaiian-born, 12,061; born in the United States, 4,068; born abroad (father born in the United States), 28; born abroad (both parents born in the United States), 19; foreign born, 12,357—total, 28,933.

APPENDIX 1.—*Showing population statistics—Continued.*

Nativity.	1911	1912	1913	1914	1915	1916	1917	1918	1919
Hawaiians.....			24,930	24,550	24,120	23,770	23,450	22,850	22,600
Part Hawaiians.....			13,730	14,236	14,800	15,334	15,850	16,100	16,600
Caucasians.....									
Americans.....									
Hawaiian-born foreigners.....									
British.....									
Portuguese.....			23,260	23,290	23,650	23,755	23,990	24,250	25,000
Germans.....									
French.....									
Chinese.....			21,500	21,631	21,770	21,934	22,100	22,250	22,500
Japanese.....			83,100	89,715	93,136	97,000	102,479	106,800	110,000
South Sea Islanders.....									
Negroes.....									
Norwegians.....									
Other foreigners.....									
Spanish.....			4,820	4,226	4,216	3,577	3,920	2,270	2,400
Porto Ricans.....			5,030	5,054	5,086	5,187	5,240	5,200	5,400
Other Caucasian.....			22,220						
Filipinos.....			12,600	14,992	15,220	16,838	19,100	20,400	22,000
All others.....			16,554	5,235	5,270	5,234	646	5,660	5,806
American-British.....				16,077	16,009	16,042	30,118	30,400	31,000
German-Russian.....									
Army and Navy.....				8,373	9,600	8,852			
Korean.....							4,731		
Total.....	200,520	209,231	217,744	227,391	232,856	237,623	250,627	256,180	263,666

<sup>1</sup> Includes 5,810 in Army, 63 in Navy, and 145 in Marine Corps of United States.

<sup>2</sup> Mostly Koreans, but includes also 1,151 in United States Army.

The CHAIRMAN. That population of 263,666 is of what date?

Gov. MCCARTHY. That is estimated to June 30 of this past year, 1919. That is the estimated population by the registrar of vital statistics of the board of health.

The CHAIRMAN. In the Constitutional Review for January of this year, Judge William W. Morrow, judge of the United States circuit court of appeals for the district of which Hawaii is a part, has an article on "The Americanism of the Constitution of the United States," and in that article appears the following:

When I was in Honolulu three years ago—

Which would be 1917—

it was represented that in 10 years the majority of the voting population of that Territory would be children of Japanese born in the Hawaiian Islands since they became a part of the territory of the United States in the year 1900, and that this voting population would naturally tend to the building up of Japanese political ideals in the Territory, unless it is Americanized. I explained to those who brought the matter to my attention that the only remedy, it seemed to me, was to see to it that these Japanese children were thoroughly trained in our form of Government and its political institutions; that they ought to be taught the fundamental principles of the Constitution of the United States and be made so familiar with them that they could declare, as aliens are now required to prove in order to become citizens, that they are attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same.

In this connection I noticed in the public press a few days ago the following in the dispatches from Honolulu: "Within 14 years Hawaiian-born Japanese will hold the political control of this Territory, according to the Rev. Umataro Okumura, a prominent Japanese clergyman, speaking at a church convention here. To prepare for the inevitable, declared the Rev. Mr. Okumura, it is essential that greater efforts be made to Americanize the younger Japanese who are growing into the franchise." This was good advice and that it is a matter of importance is apparent when we find that the estimated population of Hawaii on June 30, 1918, was 256,180

That is two years before your estimate—

an increase of 64,271, or 33.49 per cent, since the census of 1910. The population of the islands is divided as follows: Hawaiian, 22,850; part Hawaiian, 16,100; Portuguese, 21,250; Spanish, 2,270; Porto Ricans, 5,000; other Caucasians, 30,400; Chinese, 22,250; Japanese, 100,800; Filipinos, 20,400; all others, 5,560. The total number of births during the year was 9,204. The total number of pupils attendant on the public schools in the Territory on December 31, 1916, was 39,024. Of this number 14,440 were Japanese, 40,070 were Chinese, 1,795 were Americans, 3,914 were native Hawaiians, and 4,918 were part Hawaiians.

Of course, that may be the situation. If it is, it shows that over half of the population of the Territory of Hawaii are aliens ineligible to citizenship and at the present time you are having a lot of trouble out there. The Japanese are striking on your sugar plantations and in other industries. The Japanese want more money than the planters and sugar mills want to give them. I understand that there is a proposition that 40,000 Chinamen should be imported into Hawaii to meet the labor situation. Of course, if you imported 40,000 Chinamen there would be simply 40,000 more ineligible to citizenship. I would like to see every Territory in the United States become a State when the time comes that it is eligible and qualified, and while you have the population necessary for a Representative in Congress and a few of the present States have been admitted with as small a population as you have at the present time, at least the population of those States is American, and in your Territory of Hawaii less than half of them are American citizens or eligible to become American citizens. Without the law or the Constitution is changed, prohibiting children of aliens ineligible to citizenship from exercising the franchise—and it does not look as though it would be—in a few years the voting population of Hawaii will be in the hands of the children of aliens who are themselves not eligible to citizenship, and we would have created right in the middle of the Pacific a Japanese State ready-made, for the use of the Japanese Government in case of trouble between the two countries. The Orientals, having the voting strength in a few years, would naturally hold the offices were Hawaii admitted as a State.

There was a bill introduced in your legislature at the last session requiring that English should be taught in all schools in the Territory. It passed the house, but it was killed in the senate. I want to do everything that is possible for Hawaii, but I want to do it for you people and for your children and for your grandchildren, and that is what I think our committee wants to do. We want you to help us, but do not as a matter of local politics present something that ought not to be done.

Gov. McCARTHY. I might begin with the school question. The Territory of Hawaii treats the children of all nationalities exactly alike. Hawaii has had compulsory education since 1839. All children between the ages of 6 and 14 must attend the public school. In our public schools we have sought to teach the children of these different nationalities Americanism. We have tried to make Americans of them. Personally, I have held the belief that we were accomplishing our object. I had my doubts in regard to the Japanese when these land laws school bill was up for consideration by our legislature in 1919 from the fact that the governor's office and both houses of the legislature were swamped with petitions and radiograms

from all parts of the island protesting against the passage of this language bill.

I might say in connection with this language bill that the children of Japanese while attending our public schools and being taught in English also attended private Japanese school from 7 in the morning to 8.30 and from 3 to 5 in the evening, where they were taught in the Japanese language. The majority of the people in Hawaii have no objection to these children being taught the language of their parents, but we believe that they should be taught by people who understand the English language and who understand the American form of government; that in these Japanese, while we call them foreign-language schools, in these schools they should be taught Americanism, just the same as they are taught Americanism in the public schools. The teachers in these Japanese schools, however, can not speak English, the majority of them. They have not any conception of Americanism whatever. It is our belief that in these Japanese private schools that the children are taught a veneration for the Emperor of Japan, thus offsetting that which they have been taught in our public schools. And when the whole Japanese colony practically protested against the passage of this bill, where we sought to have them have suitable proper teachers in their own schools, it created a doubt in my mind as to whether or not we have been accomplishing that which we set out to do. On the other hand, there are several associations of the younger Japanese, born in Hawaii, who are American citizens and who are endowed with the spirit of Americanism. A week before the commission left Hawaii I was waited upon by a committee of one of these organizations and they presented me with a copy of a resolution or a petition which they were sending to the Japanese Parliament, asking the Japanese Parliament to amend the Japanese law providing for that dual citizenship. These young men informed me that they were born in America. They wanted to be American citizens. They do not want anything to do with Japan. They do not want Japan to have anything to do with them. They do not want to owe any allegiance to any other country except the United States of America.

How far that feeling exists among the Japanese population nobody can tell. You spoke a while ago about eventually the Japanese controlling the vote. There is no doubt about it. It is just a mathematical problem that in the course of time the Japanese would control the Japanese American citizens; would control our voting strength. Up to the present time not very many of them have registered.

Mr. SHINGLE. Quoting from the governor's report, there were 3 Japanese registered voters in 1902; 2 Japanese registered voters in 1904; none in 1906; 6 Japanese registered voters in 1908; 13 registered in 1910; 48 in 1912; 112 in 1914; 179 in 1916; 287 in 1918 registered Japanese voters out of an estimated population of 110,000 Japanese.

Mr. JOHNSON. What do you infer from those figures?

Gov. McCARTHY. Before we get away from that point, it has always been my impression and it is the general impression in Hawaii that the reason why more of the Japanese who are eligible to vote have not exercised the privilege is that they were acting under instructions from their consul. We can not prove that.



Mr. JOHNSON. And in all probability preserving the Japanese end of the dual citizenship until they are instructed by decree or otherwise to exercise the rights of voters of the Hawaiian Islands?

Gov. McCARTHY. Yes. And if they all came in together they would swamp us.

The CHAIRMAN. The births of the children are registered?

Gov. McCARTHY. The Japanese do not always register them with our registrar of vital statistics and our registrar has to get the low figures. They are all registered with the Japanese consul, and while a good many of them now register with our registrar they do that for this reason, that we have a law in Hawaii for the registration of people born in Hawaii. Now, it may be difficult later on for some of the children of these orientals to prove their Hawaiian birth, so they register with the secretary of the Territory and they get the certificate and it is prima facie evidence of the fact that they were born in America, although I do not think Caminetti accepts it. They used to at one time.

The CHAIRMAN. He can not help himself. He may say he will not but he will have to if an appeal is made to the courts. He is only an administrative officer.

Gov. McCARTHY. Along that line I will say that just before leaving home the secretary of the Territory made a report to me in regard to this registration of Hawaiian births, that he has discontinued the work on the 30th of October for the reason that the office was swamped with applications for the year 1918. I believe that the total number of births registered was 800; of children whose parents applied for certificates it was 800, and he had 1,200 in two months; and it simply swamped them with work, so that they had to discontinue the registration until they might catch up with their records.

Mr. JOHNSON. Discontinued; that means postponed?

Gov. McCARTHY. Yes.

The CHAIRMAN. Can oriental aliens own land?

Gov. McCARTHY. There is no law in the Territory, or no United States law governing the Territory, prohibiting aliens from owning any land except Government land.

The CHAIRMAN. There are a good many more Japanese land owners than there are voters?

Gov. McCARTHY. Yes. As you gentlemen know, the Japanese have not been purchasing land. They have been leasing. It is only lately they have come into the possession of land, but they have come into the possession of Government land, and that is one of the things that our amendments to the land laws by these amendments we propose to change. For instance, according to the law, when the lease of any Government lands expires, if 25 or more persons apply to the commissioner of public lands that these lands be homesteaded the commissioner must homestead them. When the drawing takes place, anybody can join in who is a citizen. A lot of these younger citizen Japanese make application, and in the last drawing about 25 per cent of the successful drawers or applicants were Japanese. These young Japanese draw and fill in their names and they put their parents on the land, thereby giving the land to the aliens. We are asking in some one of our amendments the right of selection on the part of the land commissioner of the Government, the right to reject anybody that we deem unsatisfactory as a homesteader.

The CHAIRMAN. Why don't you go a little further than that and give preference to Hawaiians and part Hawaiians?

Gov. McCARTHY. We can not do it according to the laws that exist at the present time?

Mr. JOHNSON. Do you think that Congress, even though it might desire to do so, could enact any legislation that would make a class matter of it?

Gov. McCARTHY. I doubt it myself. I am not a lawyer. The lawyers tell me you can not do it.

The CHAIRMAN. Congress does pass laws giving preference to soldiers and to Indians. It makes land allotments to Indians.

Mr. JOHNSON. Did the Japanese go into the Army as soldiers?

Gov. McCARTHY. Yes; the First Hawaiian Infantry was largely composed of Japanese.

The CHAIRMAN. The law could give preference to the Hawaiians for homesteading if Congress would enact it.

### STATEMENT OF MR. HENRY J. LYMAN, REPRESENTATIVE IN THE TERRITORIAL LEGISLATURE OF HAWAII.

Mr. LYMAN. Mr. Chairman and gentlemen of the committee, as a Territory we are attempting to Americanize all the inhabitants, but no matter how much we attempt to Americanize the children, I consider, and I feel that all our delegates consider, that the main fault comes with our good Federal Government. As a Territory we have laws by which only citizens, or those eligible to citizenship, are allowed to work on the territorial or county works, but the Federal Government makes appropriations and they employ on those Federal works in the islands, the building of fortifications and the harbor improvements, they employ, not citizens or those eligible to citizenship, but those who will work the cheapest.

The CHAIRMAN. Does the Federal Government do that, or do the contractors do that?

Mr. LYMAN. The Federal Government allows the contractors to do that, and the Federal Government, in the work that is not contracted, employs the Japanese because they will work the cheapest. Now that this question has been brought up as to why we have not more Americans there, it is because the Federal Government employs aliens who are not eligible to citizenship. Our citizens have left for California because there they have more opportunities.

The CHAIRMAN. While you are on that point, before you get away from it. Does the Navy Department and the War Department employ Oriental aliens on the construction of the fortifications and on Pearl Harbor?

Mr. LYMAN. Yes; Mr. Chairman.

Mr. WISE. There are 800 of them on the pay rolls to-day.

Mr. KALALIANAOLE. They have done it right along against my protest.

The CHAIRMAN. Your protest is right, as usual.

Mr. JOHNSON. Can not we attempt to reach that by offering a resolution, to be referred to the Committee on Appropriations covering the proviso, that no sum contained in the appropriations shall be paid to aliens?

Mr. LYMAN. We would like to have something done in that line.

Mr. STRONG. Is there any appropriation in this present bill?

Mr. JOHNSON. No; that would have to go to the Appropriations Committee and be offered on the floor. But let us see where we get off on that. Does the Army use aliens there as cooks?

Mr. LYMAN. They do.

Mr. SHINGLE. The Federal Government gives building contracts to aliens.

Mr. JOHNSON. But we are undertaking to say they shall not do any work.

The CHAIRMAN. Does the Territory of Hawaii employ them on their public works?

Mr. LYMAN. They do not; it is against the law.

Mr. IRWIN. It is a criminal offense to have any aliens employed on public works.

Gov. McCARTHY. On the Federal building contracts.

Mr. JOHNSON. That is true, but you undertake to fix who shall do the work and who shall not. You go the limit on it and do it all.

The CHAIRMAN. The Territory of Hawaii does not employ aliens on its public works?

Mr. LYMAN. It is against the law. It is a criminal offense for them to be employed on public works.

Mr. JOHNSON. If you had them, do you think there would be any danger in bringing in Coolie labor?

Mr. LYMAN. We do not want Coolie labor.

Mr. JOHNSON. But you do want them on the plantations. Now, I want to ask you another question. I notice in the governor's annual report a statement to the effect that 26 banks were in operation during the fiscal year 1919. Do you know if any of them were Japanese corporations?

Gov. McCARTHY. There were two, the Yokohama Specie Bank and the Sani Tomi, and also the Pacific, but the Pacific is a Hawaiian corporation. The Yokohama Specie Bank is a foreign corporation. The other one, the Sani Tomi, is an individual. The laws of Hawaii make a distinction between the rights that are given to foreign corporations and the rights given to a domestic corporation. Our laws give foreign corporations the right to enter into any kind of business in Hawaii except banking and railroad business. The Yokohama Specie Bank, however, had received its charter before the passage of that act and the specie bank, while its stockholders are Japanese, is really a Hawaiian corporation, organized under the laws of Hawaii.

Mr. JOHNSON. Then the stockholders are citizens of Japan?

Gov. McCARTHY. Yes, sir.

Mr. JOHNSON. The people forming the organization are Americans?

Gov. McCARTHY. Our law does not say that they shall be citizens. Aliens in Hawaii can get a charter for a corporation.

Mr. JOHNSON. Yes. Now, what I want to ask you is this: The statement was made here that Japanese have recently commenced to buy or acquire lands through homesteads in Hawaii. Did I get that impression?

Gov. McCARTHY. Yes, sir.

Mr. JOHNSON. Whereas, up until recently they have not bought much land?

Gov. McCARTHY. Yes, sir.

Mr. JOHNSON. Is it possible to ascertain if there is any arrangement by which Japanese desiring to buy land receive special inducements through the Specie Bank?

Gov. McCARTHY. I do not think so, only in a small way. We have statistics as to the property owned by different races. On page 66 of the statement by the Legislative Commission of Hawaii relative to proposed amendments of the organic act of the Territory of Hawaii, you will find that the Japanese do not own much real estate.

Mr. JOHNSON. Do you have a bank examiner?

Gov. McCARTHY. Yes, sir. We have a Federal bank examiner and a Territorial bank examiner.

Mr. JOHNSON. And they have authority to fully examine the banks?

Gov. McCARTHY. Yes, sir.

Mr. JOHNSON. Do they find that the Yokohama Specie Bank has maintained a system of bookkeeping that can be readily understood?

Gov. McCARTHY. Yes, sir.

The CHAIRMAN. Do you wish to make any further remarks, Mr. Lyman?

Mr. LYMAN. No; I think I have said sufficient.

Mr. KALANIANA'OLE. Mr. Wise had not yet spoken on the land question.

The CHAIRMAN. It is now 1 o'clock and we have agreed to hold an evening session.

Thereupon at 1 o'clock p. m. the committee took a recess until 8 o'clock p. m.

#### AFTER RECESS.

The committee met at 8 o'clock p. m., Hon. Charles F. Curry (chairman) presiding.

The CHAIRMAN. The committee will come to order, and we will hear from Senator Wise.

#### STATEMENT OF HON. JOHN H. WISE, MEMBER OF THE SENATE OF THE TERRITORY OF HAWAII.

Senator WISE. I want to begin my statement here on the land system of the Hawaiian Islands from the beginning, prior to the discovery of the islands by Capt. Cook, from the time of Cook to the coming of the missionaries, and from the coming of the missionaries to 1848, when the *mahele*, the great division, was made.

The king owned the lands and all the sea fisheries. The district chiefs under the king held these lands and sea fisheries for the king. The landlords or petty chiefs lived on these lands and acted as supervisors or controllers of the lands and the seas for the district chiefs and the king, and the common people acted as laborers, fishermen, and warriors under the district chiefs and king.

The common people had individual rights to certain portions of land for them to raise their own food and had rights to go to the sea fisheries and fish for certain fishes, the landlords declaring a certain kind of fish, whether it was the most plentiful or whether the easiest one to get, to be *konohiki* fish and the rest of the fish the common people could have. Whenever the common people got any of the *konohiki* fish the chiefs were entitled to one-third of them, and this

system of land as well as sea fishery help up to the time of the coming of the missionaries and even up to the time of the mahele.

Mr. DOWELL. When was that?

Mr. WISE. 1848. The lands were tilled by the common people, the landlords calling on the common people to work out their share of the lands one out of every five days. The Hawaiians call it poalima, meaning that their reckoning or counting was by tens. They reckon 30 days to the month, according to the moon, or 13 months to the year. Every five days the chiefs call on the common people to go out in a body to work on the chiefs' lands, and the rest of the four days out of the five they are welcome to till their own lands, and they are so productive that a piece of land 40 feet by 40 feet could sustain a family of three the year round.

Mr. JOHNSON. Did you have the products of the soil then that you have now, approximately?

Mr. WISE. No; they did not have. All they tilled in those days was the taro, bananas, the sweet potato, breadfruit, and yam, and sugar cane. The fruits they had in those days were the mountain apples, bananas, and cocoanuts.

The CHAIRMAN. What are mountain apples?

Mr. WISE. It is a fruit. I can not quite describe it. I do not think there is any fruit here that I could liken it to.

The CHAIRMAN. Does it grow on a tree or on a bush?

Mr. WISE. On trees.

Mr. JOHNSON. You did not have pineapples or rice?

Mr. WISE. No; they did not have pineapples and did not have any rice.

Mr. ALMON. What date are you referring to?

Mr. WISE. Prior to the discovery by Cook. The missionaries came to the country in 1820. I am speaking about the time prior to the discovery of the islands. From 1778 to 1848, a period of 70 years, pineapples, oranges, and other fruits came into the country. But prior to the discovery of the islands by Cook they had sweet potatoes, breadfruit, bananas, and taro to live on, and the only fruits they had were mountain apples, cocoanuts, and bananas.

The CHAIRMAN. The land conditions that you are describing applied to conditions prior to the discovery by Cook?

Mr. WISE. Yes.

The CHAIRMAN. Then after you get through with that you will describe from Cook down, down to the missionaries, and then from the missionaries on?

Mr. WISE. Yes.

The CHAIRMAN. All right. Then we will get it in consecutive order, describing the ancient land system first.

Mr. WISE. In 1778 the islands were discovered by Cook. He found the same conditions as I am describing now; that is, the kings owned all the lands and owned all the fishing rights and the common people acted as laborers and worked for the chiefs once in five days and the rest for themselves.

In 1778 the islands were discovered by Cook. From 1778 until 1820, the arrival of the missionaries, was a period of 42 years. From the discovery by Cook until the arrival of the missionaries these conditions still existed, proving how strong a hold the king had over these lands and over these fisheries. It also proved how strong the

system was that could not be broken down by that 42 years of contact with civilization.

The CHAIRMAN. How did the king use his power, for the benefit of himself or of the people?

Mr. WISE. For the benefit of the chiefs generally, though a good king would use it for the best of his people.

Mr. ALMON. You are talking about the native kings of the Hawaiians?

Mr. WISE. Yes; they did not have any other kings.

The CHAIRMAN. Well, now, the second period.

Mr. WISE. The common people were dependent upon the kings, who had their system so strong on the people that they regarded always the kings as their parents. All the lands being owned by the king and by the petty chiefs and the landlords, in turn, the common people looked to them as their lords and their masters.

Now, the missionaries arrived there in 1820.

Mr. HUMPHREYS. Those decrees touching the fish, etc., that you spoke of, that certain fish could be taken and others could not, was that enforced largely by the system of taboo?

Mr. WISE. Yes; in those days.

Mr. McCARTHY. I would like to say that this fishing system is in force to-day and has been upheld by the Supreme Court of the United States.

Mr. RAWLINE. They have vested interests in the lands.

Mr. HUMPHREYS. But not by virtue of the taboo.

Mr. WISE. What is the taboo but the law, a system preventing you from doing certain things?

The CHAIRMAN. This fishing system reached from high water mark on the shore line to as far out in the water as a man could wade?

Mr. WISE. Yes.

The CHAIRMAN. How far along the shore line?

Mr. WISE. The width of that particular ahupuaa, that particular land owned by that chief. The boundaries were laid down generations before the discovery of the islands; and although the Hawaiians had no schools, had no civilization to a certain extent, had no written language, yet they had schools and were taught the knowledge of medicine, were taught history and poetry, were taught astronomy, navigation, farming, fishing, religion, and they were taught the genealogical trees, going back for generations, but still they had no written language.

The CHAIRMAN. Just simply from word of mouth?

Mr. WISE. Just simply from word of mouth, passing down from family to family.

The CHAIRMAN. Now, this fishing system is still the law of the Territory of Hawaii?

Mr. WISE. Yes.

Mr. RAWLINS. Let me explain a little further in detail about the subdivisions of these lands. Under the old system the unit of land was known as the ahupuaa. That was the unit of division. Sometimes the ahupuaa would have a thousand acres in it and sometimes a hundred thousand acres. It would start at the seashore and run up to a point in the mountains. It might be woodland or taro land. In front of the land would be the fishing land. If the reef was some distance from the shore, the boundary of the reef would

be the fishing right. If close to the shore, the boundary would be where he could wade out. In these ahupuaas the king controlled everything. It is to be borne in mind that at the time of the discovery of the islands by Capt. Cook many of the islands were under independent kings.

The CHAIRMAN. They had four or five kings?

Mr. RAWLINS. Four, Hawaii, Maui, Kaua and Molakia had independent kings. The islands were finally all united by Kamehameha under one government.

In these ahupuaas there were subdivisions known as ilis, and these ilis in turn were divided into what was known as leles. For instance, in one of these ilis a man would have the right to cultivate a piece of land in one place and in the same ahupuaa, which was the unit of division, several miles away would be another piece which belonged to this original piece which he could use, but all of the land, as said by Senator Wise, was under the control of the monarchy until 1848, in March, when there was a division of the land. But up to 1839 and 1840 there was a recognition of the right of the title of the land in the man who had cultivated the soil, and the legislature under the king passed laws for the protection of the tenants until finally this division, which was a voluntary submission by the monarchy to the wishes of the people. He recognized that the men who had tilled the soil had more interest in it, and the division took place.

The CHAIRMAN. The Senator has not explained that division of the monarchy and the aristocracy and the common people as yet.

Mr. WISE. I am coming to that. In 1820 the missionaries arrived in Hawaii.

The CHAIRMAN. I want you to tell what promises they made and what oath they took after they got over there, and how they kept them.

Mr. WISE. When they left the eastern coast they took an oath, and in this oath were two articles that I would like to bring up in connection with the land system. One was that they were not to acquire one foot of land.

The CHAIRMAN. That is the missionary society of the United States, the American Board of Missions?

Mr. WISE. And the second one was that they were not to go into politics.

The CHAIRMAN. Were not to own any lands and were not to go into politics?

Mr. WISE. When they arrived, they found the conditions I have stated, and as Mr. Rawlins has stated. They told the people it would be very hard for the white man's religion and civilization to be introduced into the country unless the people owned their homes. They believed that the people should own the lands. This was in 1820. The chiefs did not see this very clearly at first, but from 1836-1838, and then gradually up to 1840, they decided that in order to Christianize the people, in order to accept the white man's religion fully, they ought to take the white man's way of dividing up the lands, so the king in 1848 completed the division and made known to the people that there were three classes of people that had vested rights in the lands: One was the king, the chiefs and the landlords in one group, the government in another group, and

the common people in a third group. In 1848 when this great mahele was decided on, the first division went to the king, chiefs, and landlords. They took 1,619,000 acres.

The CHAIRMAN. All the lands?

Mr. WISE. Yes; because the King had got them all under one king. The Government took 1,505,460 acres. The Crown got 984,000 acres. Then the common people—

Mr. DOWELL. Just a moment. What is the difference here?

Mr. JOHNSON. That is on the side—three divisions, and the Crown on the side.

Mr. WISE. I am coming to that. Twenty-eight thousand acres went to the common people. That is all that went to the common people. Nine hundred and eighty-four thousand acres went to the Crown. The Government had no control over this land prior to annexation, prior to the overthrow of the Queen. I should correct myself there. That portion of 984,000 acres went to the Crown to support the different monarchies from the time of Kamehameha to Kalakaua, and even to Queen Liliuokalani.

Mr. DOWELL. As I understand it, then, 1,505,460 acres went to the king.

Mr. WISE. To the Government.

Mr. DOWELL. How much to the King first?

Mr. WISE. 1,619,000 acres to the King, chiefs, and landlords.

Mr. JOHNSON. I think that is clear. That went to them as individuals.

Mr. DOWELL. I want to get just what you mean when you say it went to the Crown.

Mr. WISE. To the support of the King, the Crown.

Mr. DOWELL. But he already owned 1,619,000 acres, and this that went to the Crown was to be used for his support in addition to that?

Mr. WISE. He did not own all that number of acres. The chiefs and landlords shared with him. His share went as his personal property. He could dispose of it or do anything he wanted with it.

Mr. DOWELL. The million acres?

Mr. WISE. The million acres did not go to the King as his personal property.

Mr. DOWELL. The Crown lands was not his personal property but went for his support?

Mr. WISE. Yes.

The CHAIRMAN. That was entailed from king to king.

Mr. DOWELL. I understand.

Mr. WISE. The common people, however, received only 28,000 acres and always contended that these Crown lands went to the crown in trust for the common people. They knew that some day they would have some of that land, and that is ground into them even to-day.

The missionaries when they came in 1820 found out, as I said, that they could not educate the people according to their plans unless they had some lands that they could cultivate or use for the cause of education, and knowing that they had taken this oath before they left the United States, they petitioned the American Board of Missions to be allowed to take some of these Government lands from the King and use them for the cause of education. The American Board of Missions told them to apply to the King and the chiefs, and if they



could get those lands well and good. They did, and they were given something like 9,566.77 acres. After the land division was made in 1848, they again petitioned the American Board of Missions that these lands be transferred to them individually, that they be immune from the oath that they had taken, that the field was self-supporting, and the American Board of Missions allowed them their plea and told them as far as the lands were concerned they were to ask the ruling King at the time and the chiefs if they could not have those lands individually. The King and chiefs turned around and gave them the 9,566.77 acres. They wanted to buy some more lands and they purchased 21,336.401 acres.

The CHAIRMAN. For how much money?

Mr. WISE. As cheaply as the Hawaiians did, and in some instances cheaper.

The CHAIRMAN. You do not know how much?

Mr. WISE. The prevailing price at the time was 25 cents an acre. They requested that their children be given the right to purchase some more lands and they purchased 10,401.80 acres, making a total of 41,304.991 acres as compared with 28,000 acres for about 8,000 families of Hawaiians, 41,000 acres for 33 families of missionaries. We do not begrudge the missionaries the taking of these lands. I believe they were entitled to these lands for the services rendered to the Hawaiian people. Some got very small portions. I just wanted to bring this in to show how liberal the Hawaiians were to the foreigners. I just brought this in to show you that when the Hawaiians had everything they gave everything, and now that the United States has control of all the Government lands, we come to the United States to-day and expect you to have the same feeling and the same liberality and the same liberal spirit, and return some of these lands to the Hawaiians.

Mr. JOHNSON. That is to individual Hawaiians, the right to homestead them and own them in reasonable tracts?

Mr. WISE. At a reasonable price. We contend that the 28,000 acres given to the common people was not a fair division.

The CHAIRMAN. Have the lands laws of Hawaii been amended in any particular since the time you are speaking of now?

Mr. WISE. What do you mean? The land laws as amended by the organic act?

The CHAIRMAN. You are coming to that, are you not?

Mr. WISE. Yes.

The CHAIRMAN. You have not got through with that? I thought perhaps you had forgotten it.

Mr. WISE. Now the question would arise, why did not the Hawaiians take advantage of the situation at that time of the division and buy up these lands the way the missionaries and the other people did; why did not the Hawaiians go in and buy like the rest of the people? I want you people to pause for a moment and consider that the Hawaiians prior to the great mahele considered that the kings owned all the lands. They did not have the ambition to own the lands, and when the lands were given to them in 1848 some of them took advantage of this and some did not. Some still clung to the chiefs and the old landlords. I can remember when my grandfather was living and I was a boy about 8 or 9 years, I asked him why it was he did not have more land. He said, "Your grandfather, my

father, would not allow me to get more land than I have. And yet I took care of those old people and buried them." This shows how strongly the ties were between the landlords and the chiefs. They did not want the common people to own any of the lands at the time of the great mahele in 1818. Bear in mind that they had very little need of things for to-morrow. They lived only for to-day. They knew nothing about competition. They lived and let live. Take those people and place among them a bunch of Eastern Yankees, and take the Chinese and Japanese, who are the Far Eastern Yankees. Place the Hawaiians among those people; can you wonder that the Hawaiians did not get more? With all your boasted centuries of civilization and competition, you of California to-day feel that you can not compete with the Yankees of the Far East. What show had the Hawaiians in 1848 to acquire more lands than they did at that time? No show whatever. They felt and believed in the same teaching that Paul gave, "that it is better to give than receive." That teaching was exemplified by them. They gave everything they had.

Now, in 1890 the reciprocity treaty between Hawaii and the United States came to an end. McKinley at that time advocated—

The CHAIRMAN. One moment, Senator. Do you not think that you have skipped over the time of the Republic of Hawaii?

Mr. WISE. I am coming to that now. In 1890 McKinley advocated a bounty on sugar. The planters of Hawaii felt that the time had come to advocate annexation in order that they might be safe, because the reciprocity treaty had come to an end, and in order to save themselves and to save the country they wanted annexation. From 1890 to 1893 they schemed to overthrow the queen, and in 1893 this was accomplished with the help of your warships, and a provisional government was established, and a petition was sent to Congress of the United States asking for annexation. Through some cause, I do not know what, when Cleveland came in as President they were not so successful, but from 1893 until 1898 they were looking for annexation. In the meantime they changed from the provisional government to the Republic of Hawaii and took all the crown lands away from the crown, away from the common people, and placed them as Government lands. From that period big sales of these lands took place. Lots of them were homesteaded by Englishmen, by Germans, and by aliens, simply because they wanted to get these rich lands that were crown lands into the hands of these people.

In 1898 annexation took place. The plea of the Hawaiian Republic was allowed, and Hawaii came in as a Territory of the United States of America. The title to these Crown lands, the public lands as they were known, were turned right over to Uncle Sam, and to-day Uncle Sam has title over the lands, although they were given over to the Territory of Hawaii to administer.

Mr. STRONG. How many acres, do you know?

Mr. WISE. One million six hundred and seventy-eight thousand four hundred and sixty acres. That was the total of acreage on December 31, 1918.

Mr. KALANIANA'OLE. What has happened to the Government lands?

Mr. WISE. They all have been sold except the waste lands and the forest reservations.

Mr. STRONG. Who sold them?

Mr. WISE. They were sold by the monarchy and by the different Governments.

Mr. STRONG. But the United States Government got over 1,000,000 acres?

Mr. WISE. One million six hundred and seventy-eight thousand four hundred and sixty acres.

The CHAIRMAN. The Government does not control them.

Mr. WISE. They are at your disposal.

The CHAIRMAN. You administer the lands?

Mr. WISE. We administer them.

The CHAIRMAN. Yes.

Mr. WISE. But according to laws laid down by the Congress of the United States.

The CHAIRMAN. Well, of course, that is under the organic act, but the United States Government can not sell these lands nor give them away.

Mr. McCARTHY. The United States can take land for Government purposes.

Mr. DOWELL. Is there any land subject to homestead?

Mr. WISE. Yes.

Mr. DOWELL. It is being homesteaded by the Territory?

Mr. WISE. By the Territory according to laws laid down by Congress.

Mr. DOWELL. But under this law you are given full control, except the right of the President to take land for governmental purposes?

Mr. WISE. Yes. Of course, there are certain restrictions.

Mr. DOWELL. But aside from that, you have absolute title and control of the land?

Mr. WISE. Yes.

The CHAIRMAN. Mr. Dowell, the senator will come to that proposition. Under the law you or I or anyone who is in the Sandwich Islands, including Chinese, Japanese, and orientals born in the United States, and Europeans who are eligible to citizenship, may homestead these lands. He has come to the point where he has a proposition to present in order to save these lands for the Hawaiian people. That is what he is leading up to.

Mr. WISE. These lands are, roughly, 78,970 acres agricultural land, 486,110 acres pastoral, 40,400 acres in the course of being homesteaded, 565,030 acres forest lands, and 507,950 acres waste lands.

Mr. HUMPHREYS. Senator, may I ask a question? You differentiate the lands for homestead from the lands that are good for agricultural and pastoral purposes?

Mr. WISE. The difference is this, that one is the undeveloped lands and the other is the developed lands. One is the land that might be used for sugar cane or things of that nature and the other is—

The CHAIRMAN. I think you had better explain so that the members of the committee who do not understand the situation there will know that most of this land is Government land leased, and that probably would be an answer to the question.

Mr. WISE. From the time of the division up to the time of annexation, most of the Government lands, the agricultural lands in the division of the Government, had been sold, and the only reason why the Crown lands were left was simply because King Kalakaua, the last monarch, went to work and leased these lands under long-term

leases, and these leases now are expiring or are about to expire, and they are the only lands we have to homestead. Now, to go to work and allow these lands to be homesteaded by other nationalities, American citizens other than Hawaiians, does not seem fair to us. Mr. Japanese, who is born in Hawaii, as soon as he is old enough, goes in and draws with the Hawaiians and gets a piece of land.

Mr. DOWELL. He is a citizen of Hawaii?

Mr. WISE. Yes; in that way the lands are being taken away from the Hawaiians. We contend that the crown lands belong to the common people.

Mr. DOWELL. How would you discriminate between the citizens there?

Mr. STRONG. He would have to have a mixture of Hawaiian blood.

Mr. KALANIANA'OLE. Were these crown lands under the monarch open to settlement by citizens?

Mr. WISE. No.

Mr. KALANIANA'OLE. Then these lands were held by the crown in trust for the common people?

Mr. WISE. Yes; of the Hawaiian race.

The CHAIRMAN. There is an equity and justice in saying that these crown lands belonged to the Hawaiian people.

Mr. DOWELL. I want to get the information.

Mr. WISE. I believe the Hawaiians should have the first choice.

Mr. WISE. There is only a little of this land left.

The CHAIRMAN. And there are only about 40,000 Hawaiians and part Hawaiians.

Mr. DOWELL. Suppose he discriminates between Hawaiians?

Mr. WISE. The reason why this Senate resolution number 2 was introduced was to overcome that difficulty. The Hawaiian people, those of Hawaiian blood, have rights to these crown lands, for the Government of the United States and the Territory of Hawaii have given them these rights. We feel that we have not got all that is coming to us.

Mr. JOHNSON. What does the Constitution say about this, the Constitution of the United States? Is it not clear that, suppose a family came from Japan to the Hawaiian Islands and that the husband becomes a naturalized citizen of the United States. Once he has become naturalized and takes his oath, is he not entitled to every right that every other citizen has?

Mr. WISE. Yes.

Mr. STRONG. Yes; but if the Hawaiians have an equitable and just right to these lands, should we take them and make them Government property and give the whole citizenship of the United States equal rights?

Mr. WISE. The United States Government has seen fit to set aside lands for the Indians. Why do they do that? Was it not because you recognized that they had some rights?

Mr. JOHNSON. Exactly so, but they had an equity, an equitable right to all the lands.

Mr. WISE. That is what I am trying to explain to you that we have that right.

Mr. HUMPHREYS. This came about with the Indian by treaty. He was not a citizen. He was a foreigner. But in the treaty with

the Indians, as with a foreign nation, we acknowledged his rights to certain lands.

Mr. STRONG. We bought his lands from France just the same, and we made a treaty with him because we recognized an equitable right.

Mr. WISE. The only blame to be attached to the missionaries is this, that they brought the white man's civilization to the country and they told them that these lands should be divided up among the Hawaiians, but they failed to protect them when they got those lands.

Mr. DOWELL. And the missionaries took the lands?

Mr. WISE. They took their share. We are satisfied.

Mr. DOWELL. Your claim now is that the United States Government has taken the place of the other governments and is holding the land as against the Hawaiians?

Mr. WISE. Yes. Now, the Maori, the native people of New Zealand, are the same people as the Hawaiians. Their land system was just the same as the Hawaiians. The king owned everything, and the people did the tilling of the lands. The British Government recognizes this yet. Whenever the British Government wants any of those lands they buy them of the people occupying them.

The CHAIRMAN. I think you are trying to impress upon the committee the fact that from your standpoint these crown lands never really vested in the Federal Government except in trust for the common people.

Mr. WISE. That is what I was trying to say.

The CHAIRMAN. That they were placed in trust for the common people when in the possession of the king, and just as we have provided lands for the Indians, we may use these lands to provide for the Hawaiian race.

Mr. JOHNSON. Queen Liliuokalani, after she left the throne, claimed some rights to these lands, did she not?

Mr. WISE. Yes.

Mr. JOHNSON. But she never received any pay in lieu thereof?

Mr. WISE. No.

Mr. JOHNSON. And she made every effort, and her representatives and attorneys, too, to secure that right from the Government, did she not?

Mr. WISE. Yes; from the Government.

The CHAIRMAN. That was for herself. It was not for the people.

Mr. JOHNSON. That was her claim, to the crown lands.

The CHAIRMAN. She claimed them personally?

Mr. WISE. She claimed them for herself.

Gov. MCCARTHY. Going back to the ancient history of Hawaii, in 1843 Lord George Paulet, an English naval officer, came there in command of an English warship, and had trouble with the Hawaiian authorities, and in the course of this trouble he hauled down the Hawaiian flag and hoisted the British flag and took possession of the islands in the name of Great Britain. Two Americans, one named Marshall—I have forgotten the name of the other one—left Honolulu and got over to England and laid the case before the British Foreign Office. The foreign office sent Admiral Thomas, ordered him to Hawaii to restore the flag. This was done in the square opposite the McKinley high school and it is now known as Thomas Square. The

British Government in 1843 recognized the independence of Hawaii and was joined by France, both countries recognizing the independence of the country. Later in the year the United States Government joined with France and Great Britain and recognized the independence of the country.

Now in 1893 the monarchy was overthrown, as Senator Wise has explained. On the face of things it appeared as though the monarchy was overthrown from within, by the people residing in the islands, but as a matter of fact the monarchy was overthrown by the superior forces of the United States who landed from the United States ship *Boston*. The provisional government that took charge was succeeded by a republic. In the adoption of a constitution for that republic, one of the articles of the constitution provided that the crown lands were government lands; that is, they confiscated them. Now the Queen came on to Washington and sought to get something from the United States Government for those crown lands. If the United States Government gave her anything, they would have thereby recognized the fact that the monarchy was overthrown by the United States Government, and the committee making the investigation, and the court that took the matter up later on, decided that those lands came to the United States through an article in the constitution of the republic of Hawaii, and that the United States Government could not go back of that constitutional provision in the constitution of the republic of Hawaii.

The CHAIRMAN. Have you that section of the constitution with you?

Mr. RAWLINS. Article 95 of the constitution of the republic of Hawaii provides (reading):

ART. 95. That portion of the public domain heretofore known as crown lands is hereby declared to have been heretofore and now to be the property of the Hawaiian Government and to be now free and clear from any trust of or concerning the same and from all claim of any nature whatsoever upon the rents, issues, and profits thereof. It shall be subject to alienation and other uses as may be provided by law. All valid leases thereof now in existence are hereby confirmed.

The CHAIRMAN. Prince Kalaniana'ole would be the king if Hawaii was still a monarchy?

Mr. WISE. Yes.

The CHAIRMAN. He is making no claim for these lands except to get them for the common people?

Mr. WISE. That is all.

Gov. MCCARTHY. In this crown land proposition, to simplify that which has been already stated, Kamehameha the Fourth had been selling a portion of these crown lands and had been mortgaging them and Kamehameha the Fourth had got deeply in debt, and the monarchy advanced the money to pay for the debts of the king, and they cleared title to those lands which he sold, and in lieu of the Government having advanced this money to clear up this situation the king made a deed of these crown lands so that they became from that time on crown lands—this was adopted by the legislature in 1865—and from that time on these crown lands could not be sold, but they could be leased for a period not to exceed 30 years, and there was a provision in the deed of trust that the income of those crown lands should go to the monarch.

The income from those crown lands in 1890 was \$50,000 a year, and many of the leases were made at a time when the lands were

fit only for pasture, and had very little value, but after 1876, when the reciprocity treaty went into effect, these pasture lands were then converted into sugar lands so that the lands had a greatly increased intrinsic value. As an instance, the crown lands on Kauai, 57,000 acres, were leased to one man at \$4,000 a year. The lease expires on the 1st of June, this year. The lease was extended a year to enable them to take off the crop and last year \$100,000 income was received from portions of the lands which they sublet and they had a cattle ranch outside of that.

Mr. JOHNSON. All that is interesting, but, in spite of the fact that Queen Liliuokalani apparently lost her right to the crown lands through the setting up of the republic, I think the United States Government treated her rather shabbily in not giving her an annuity or a pension.

Gov. McCARTHY. The people of Hawaii gave her a pension. Many of the people were opposed to her, yet they felt that she had been harshly treated and they gave her a pension.

Mr. JOHNSON. The people of Hawaii will never regret that generous act.

The CHAIRMAN. The Federal Government ought to have done it, but I suppose that most of you will remember that Cleveland offered to restore the monarchy if she would grant amnesty to the revolutionists, but she said she would not do it.

Mr. WISE. The reply was made that that would have to be decided by the constitution of the country, not by her, and the people twisted that to mean that she wanted to hang all of them.

Mr. SHINGLE. I would like to amplify the governor's statement with reference to this piece of land the lease of which expires this year. I would like to put into the record that for this land there has been an upset price of \$5,000,000, or a rental price of \$250,000 a year. That is an upset rental that would be offered for this land.

Mr. DOWELL. Who gets this, the Government?

Mr. RAWLINS. The Government gets \$4,000 and the lessor \$100,000.

Mr. DOWELL. This is by lease which the Government made?

Mr. RAWLINS. And which has expired.

Mr. DOWELL. If the Government leases it it will get what rental?

Gov. McCARTHY. \$250,000 a year.

The CHAIRMAN. That is part of the land that the Hawaiian people want?

Mr. JOHNSON. Let us ask about that very piece. Now here is a cultivated tract in what island?

Gov. McCARTHY. Kauai.

Mr. JOHNSON. Let us assume that some form of legislation is established—I do not think it is probable, to be fair with you—by which native Hawaiians acquire the right to appear before some board or set of officials in Hawaii to establish title to that land, or the homestead rights to it. We will say the land is so valuable that 5,000 Hawaiians apply for it, and 50 get it. Would not that make bad blood?

Mr. WISE. It would.

Mr. DOWELL. Is that land subject to homestead when this lease has expired?

Mr. RAWLINS. Yes; on petition of 25 residents.

Mr. DOWELL. Then your territorial government has the right, has it not, to homestead it to native Hawaiians?

Gov. McCARTHY. No; to American citizens, or those eligible to American citizenship.

Mr. DOWELL. That will be subject to homestead, and Hawaiians can take it, but others have that same right?

Mr. WISE. I would like to confine you still more closely. There are only 4,500 to 4,800 acres of it in sugar cane, and just for that portion and water rights alone they are offering \$250,000.

Gov. McCARTHY. Out of the 57,000 acres, and the water rights.

Mr. DOWELL. Suppose one had a homestead there, would not there be more profit to the homesteader if he would lease it under conditions of that kind, at the rental you have suggested, than to operate it himself?

Gov. McCARTHY. That is what most of the homesteaders are doing now.

Mr. DOWELL. That is what I am inquiring about.

Mr. WISE. The past session of the legislature when Representative Rawlins's resolution was brought out, resolution No. 28, which is in this pamphlet, they amended that resolution by cutting out 3,000 acres of that land and allowed that to be homesteaded before everything else, showing how strong the people of the islands are trying to homestead the highly developed land.

The CHAIRMAN. The senator has a proposition when he gets to it, after he completes this preliminary statement, that provides that these homesteaders shall live on the land, and of course that can be provided because we provide in your State where there is public land that a man shall live on it, and in my State that they shall live on it.

Mr. DOWELL. I am just trying to get at how we are going to do it. This rental that is being paid is by the sugar refiners I assume?

Mr. WISE. The company.

Mr. DOWELL. The company. Are not these homesteaders subject to this company's price on everything they produce on these homesteads there?

Mr. WISE. They have to be. It takes two to make a bargain. If the mill says "You are asking too much for your sugar cane, I won't grind it," the homesteader replies, "You won't get my sugar cane."

Mr. DOWELL. That is protected by legislation?

Mr. WISE. Yes.

Gov. McCARTHY. The Government tries to protect the homesteader in the contract. In any contract entered into between the homesteader and the mill company, the homesteader learns that before it is legal it must be approved by the governor. Now, the governor as a general thing does not know anything about sugar, and at the last session of the legislature they provided the governor with a sugar expert that would be paid \$500 a month, and he is a sort of legal adviser to the governor in the matter of sugar contracts. So that the territorial governor protects the homesteader to a great extent in seeing that he gets everything that is coming to him.

Mr. DOWELL. Are you able to protect him and get him a fair price for his products?

Gov. McCARTHY. We have been doing this since we have had the advice of this expert.

The CHAIRMAN. Now, governor, the sugar mill on this particular piece of property, that is owned by the Government?



Gov. McCARTHY. It will become the property of the Government when the lease expires.

The CHAIRMAN. The people of Hawaii will own it, and the people who homestead this property and other pieces of property, instead of taking their sugar cane to the mill of private individuals and saying, "What will you please give me for my sugar?" will be dealing with a sympathetic government.

Gov. McCARTHY. The territorial government would not run the mill.

The CHAIRMAN. They own it and will control it, and if they do not run it themselves they would not lease it to me to exploit these homesteaders. They might lease it to homesteaders?

Gov. McCARTHY. As Mr. Rivenburgh, who has been commissioner of public lands of the Territory, has just suggested to me, in making leases we can make certain conditions which will protect the interests of the homesteaders.

The CHAIRMAN. I am going to try to see that some protection to the Hawaiians goes into this bill.

Mr. DOWELL. Are the mills to be sold?

Mr. McCARTHY. The mill in this particular plantation becomes the property of the Territory when the lease expires.

Mr. DOWELL. Would the Territory dispose of that mill, or operate it?

Mr. McCARTHY. I do not think the Territory would operate it. That is a matter for after consideration.

I want to say right here that this particular proposition which is before the committee is Senator Wise's proposition. I would say that I am not going to oppose it. I want Senator Wise to make his case. But I do not feel so very strongly in favor of the proposition that he is putting forward. But that is his case. There are other ways of handling the lands which we propose, and if Mr. Wise's proposition goes through Congress here, that settles the rest.

Mr. HUMPHREYS. Senator Wise, has your proposition been passed on by the Hawaiian Legislature?

Mr. WISE. Yes.

Mr. HUMPHREYS. And they are in favor of your proposition?

Mr. WISE. Yes.

Mr. STRONG. Let us permit him to go on and state his case.

Mr. WISE. The only opposition to my plan is from the chamber of commerce, a body entirely outside of the legislature, and the only opposition they bring in is on page 83 of that pamphlet, and the only excuse they give is because it is class legislation.

Mr. STRONG. They want their share, I suppose.

Mr. DOWELL. Are the mill owners in control of the chamber of commerce?

Mr. WISE. They are all sucking out of the same quill.

Mr. ALMON. Are there any native Hawaiians who are members of the chamber of commerce?

Mr. WISE. Mighty few.

Mr. DOWELL. Who are they, Americans?

Mr. WISE. All are Americans now; some Englishmen, who have not renounced their allegiance to Great Britain; but they sometimes get in there and advise things, and I have seen them carry out a good many of their ideas.

Mr. DOWELL. How large is that chamber of commerce?

Mr. MCCARTHY. About 450 members, I think.

Mr. SHINGLE. It represents the business industry of the islands, the business men of the country.

Mr. STRONG. Are they the fellows who take the position of chiefs of the olden times?

Mr. WISE. Yes.

Mr. McCLELLAN. May I ask——

The CHAIRMAN. I would like to have the senator get through with his talk.

Mr. McCLELLAN. I do not want to talk at all. I happen to be the representative of the chamber of commerce, and merely wish to say that in view of some of the statements that have been made I would like later to ask the privilege of replying.

The CHAIRMAN. We will take that matter up when we reach it. Right now I want to hear from the representatives of the Government of Hawaii.

Mr. WISE. This resolution, introduced by myself, concurrent resolution No. 2, was passed by the legislature without any amendment. This resolution No. 28, asking for changes of our organic act in reference to land laws, also passed both houses with this amendment injected on page 52, the top part of the page, near the end of the paragraph (reading):

After adequate provision has been made by the Congress aforesaid to accomplish the purposes set forth in senate concurrent resolution No. 2 heretofore adopted by both houses of the legislature.

I want the committee to bear in mind that concurrent resolution No. 28 can only be considered after adequate provisions shall have been made for concurrent resolution No. 2, providing, of course, the committee sees fit to give the Hawaiians some of these lands.

Mr. JOHNSON. I think the committee would give them all to you if you could only find the way to do it legally.

The CHAIRMAN. That is up to you.

Mr. JOHNSON. That is the problem. You delegates know it yourself just as well as the rest of your people.

Mr. WISE. I believe that the Congress of the United States can do it and do it legally.

Mr. DOWELL. Will you tell us how?

Mr. WISE. Have you come to the point, then, that my claim is established?

The CHAIRMAN. No; but go on with your argument.

Mr. HUMPHREYS. I think the senator ought to be permitted to proceed in his own way to make out his case, and then take up the legal aspects later on.

Mr. STRONG. We are breaking into his chain of argument. I do not think it gives him a fair chance.

Mr. DOWELL. I think he is making a very fine explanation.

Mr. WISE. So much for the land system. I will come to the next point of my claim, and that is that the Hawaiian people are a dying people. Just at this time the American people are trying to do something for the dying people of Europe. They are reaching out across the Atlantic and are trying to help the Belgians, to help the French, and to help other races of Europe, and I would like to have the committee just pause for a moment and look back at the Hawaiians, a

noble race, who in 1778, according to Cook's estimate, were 400,000 individuals. Allowing that Capt. Cook's estimate was much too high, the first official census was taken in 1832 and the number placed at 113,319. The estimated population in 1919 was 22,600 pure Hawaiians and 16,660 part Hawaiians. The Hawaiians were never savages, as I said. They had their system of schools even though they did not have a written language.

The causes of the decline of this race are many. Some attribute it to liquor, some to disease, some to the mode of living. Now, the taro, the Hawaiian food, was the only food they had for generations, outside of sweet potatoes. When civilization came into the country, other kinds of food were brought in. When they leased their land, the cultivation of taro became scarcer, and they had to pay higher prices to get taro, and consequently the poor Hawaiians had to take what taro they had and mix it with flour and other things, which made the quantity but not the quality.

Right here I would like to take up the time of the committee in explaining the different values of food, the ingredients of food. You take rice. A Chinaman would pick his own rice and say, "Do not give me any Japanese rice, because I would not be able to live on it." And the Japanese would select the Japanese rice, not the same rice that the Chinaman uses. Yet a lot of men could not tell the difference between the two kinds, except that one is stouter. If for centuries the Japanese have not been able to live on the Chinese rice and the Chinese have not been able to live on the Japanese rice, how could the Hawaiians live on this mixed food they get to-day? That, I contend, is why they are deteriorating and becoming extinct. The idea in trying to get the lands back to some of the Hawaiians is to rehabilitate them. I believe we should get them on lands and let them own their homes. I believe it would be easy to rehabilitate them. The people of New Zealand are increasing to-day because they have the lands to live on and are working out their own salvation.

Mr. DOWELL. Do they want to homestead these lands and care for them?

Mr. WISE. Yes; they are very anxious to get on them. The last piece put out for homesteads, only 31 lots, 905 people applied for them.

Mr. HUMPHREYS. How many of the 31 went to Hawaiians?

Mr. WISE. Three or four, I think.

Mr. MCCARTHY. About 25 per cent went to orientals, citizens of the United States of oriental parentage.

Mr. WISE. The Hawaiian people are a farming people, and fishermen, out-of-door people, and when they were frozen out of their lands and driven into the cities, they had to live in the cheapest places, tenements. That is one of the big reasons why the Hawaiian people are dying. Now, the only way to save them, I contend, is to take them back to the lands and give them the mode of living that their ancestors were accustomed to and in that way rehabilitate them. We are not only asking for justice in the matter of division of the lands but we are asking that the great people of the United States should pause for one moment and instead of giving all your help to Europe, give some help to the Hawaiians and see if you can not rehabilitate this noble people.

Mr. KALANIANA'OLE. How do you propose to get them back on the land?

Mr. WISE. Give some of the lands back to them.

Mr. KALANIANA'OLE. Suppose Congress does give up certain lands, or the territorial government.

Mr. WISE. The hardest part of getting the Hawaiians to go back on these lands is how to get them started. They have no money to begin this new life, and the only way, if I may be allowed to suggest, is to take some of the revenues from these highly developed lands that are supposed to be leased out to some of these plantations and use that money and apportion that money to assist them on these lands.

Mr. DOWELL. What are they engaged in, what is their work now?

Mr. WISE. The Hawaiians?

Mr. DOWELL. Yes.

Mr. WISE. They are stevedores, some of them, on the plantations, some of them farming, some ranching, everything—clerks and politicians. The Hawaiians went into the trades a good bit. I myself took up the profession of carpentering, but when the Japanese became so thick in the country and worked for a dollar and a dollar and a quarter a day, we had to give up our trades. We could not compete with them. I know of 12 carpenters, mechanics, to-day who are working on the water front as stevedores rather than go back to their own trade because they could not earn enough, and as was brought out this morning, all the Federal work is done by the Japanese and Chinese, not only in building, but in constructing roads.

The CHAIRMAN. If we put a section in this bill requiring work on Federal projects to be done by American citizens, the same as you have in Hawaii, that the work on the public works should be done by American citizens, would that help?

Mr. WISE. Yes; I think so very materially. A good many of our young people to-day are forced to take other trades than carpentry or mechanics simply because there is no opening for them. They could not compete with the Asiatics.

The CHAIRMAN. The Secretary of the Navy asked this committee some time ago to report out from this committee a bill giving him the authority to acquire certain fishing rights in Pearl Harbor, so that he would have the authority in time of peace to keep Orientals out of Pearl Harbor, away from the military fortifications as well as the navy yard at Pearl Harbor. We passed that act, which has been signed by the President. Am I to understand that the Federal Government is now using Orientals in the navy yards, in Pearl Harbor and on the military fortifications in Hawaii?

Mr. WISE. We have them everywhere.

Mr. DOWELL. Are those native born?

Mr. WISE. Aliens mostly.

The CHAIRMAN. I think we had better do something.

Mr. RAWLINS. I think it is not so much in the navy yards as in the shops. I know of native-born Chinese boys who are pattern makers and machinists. There were a great many Japanese and Chinese used in the dry docks, but that is not more noticeable than the use of Orientals in the Army headquarters at Schofield.

The CHAIRMAN. Do they use them on the fortifications?

Mr. RAWLINS. I have never seen them on the fortifications. That work is being done by Hawaiians. But at these military posts they are using Oriental labor.

Mr. DOWELL. Has this been taken up with these departments?

Mr. WISE. Here?

Mr. DOWELL. Yes.

Mr. WISE. The excuse is that they can not find citizens.

Mr. STRONG. Do the Japanese belong to unions?

Mr. WISE. Yes.

Mr. STRONG. Then we can not do anything.

Mr. KALANIANA'OLE. You do not find so many Asiatics about the fortifications, but where they are not prohibited you can find nothing by Asiatics.

The CHAIRMAN. When they were building fortifications did they use Asiatic labor?

Mr. KALANIANA'OLE. Yes. I called upon Congress to put a proviso in that only citizens should be used on fortifications, but Congress never saw fit to do that.

Mr. DOWELL. Are there enough to do this work aside from the orientals?

Mr. KALANIANA'OLE. I think there would be; but under present conditions they would have to compete with the Japanese. Under that competition they were driven out of Hawaii.

Mr. DOWELL. With whom did you take that up?

Mr. KALANIANA'OLE. With the War Department and the Appropriations Committee. I never succeeded in getting to Congress.

The CHAIRMAN. Probably you are before a sympathetic committee this time.

Mr. WISE. That is the sum and substance of my statement unless there are some questions.

Mr. RAWLINS. Will you read the resolution No. 2?

Mr. WISE. Has it been introduced?

Mr. STRONG. Put it in the record with your remarks.

(The resolution is as follows:)

Whereas the distribution of lands under the Kingdom of Hawaii, whereby the power to alienate the same has resulted in the loss to the Hawaiian people of a large part of their original birthright so that the members of the race now constitute a large part of the floating population crowding into the congested tenement districts of the larger towns and cities of the Territory under conditions which will inevitably result in the extermination of the race; and

Whereas members of the Hawaiian race or blood should be encouraged to return to the status of independent and contented tillers of the soil, preserving to posterity the valuable and sturdy traits of the race, peculiarly adapted to the islands comprising the Territory of Hawaii, inhabited and governed by peoples of their race and blood as their birthright for a long period of time prior to annexation with the United States of America; and

Whereas there is now available or soon to become available large tracts of public lands under the control of the United States of America from which suitable areas could readily be set aside permanently as Government lands subject to long term leases and renewals of leases for the encouragement of associations or colonies of individuals of Hawaiian blood for mutual growth and help to bring a rehabilitation of their race and to furnish an incentive for the preservation of the best characteristics of an independent citizenship of Hawaiian blood; now therefore be it

*Resolved by the Senate of the Legislature of the Territory of Hawaii, the House of Representatives concurring,* That the Congress of the United States of America be respectfully petitioned herein to make such amendments to the organic act of the Territory of Hawaii, or by other provisions deemed proper in the premises, that from time to time there may be set aside suitable portions of the public lands of the Territory of Hawaii by allotments to or for associations, settlements, or individuals of Hawaiian

blood in whole or in part, the fee simple title of such lands to remain in the government, but the use thereof to be available under such restrictions as to improvement, size of lots, occupation and otherwise as may be provided for said purposes by a commission duly authorized or otherwise giving preference rights in such homestead leases for the purposes hereof as may be deemed just and suitable by the Congress assembled: and be it

*Further resolved*, That copies of this resolution be engrossed for presentation by the Delegate of the Territory of Hawaii to the Speaker of the House of Representatives, the President of the Senate, and the President of the United States.

The CHAIRMAN. How many more are to be heard?

Mr. WISE. Mr. Lyman, Mr. Shingle, Mr. Rawlins, and the Attorney General, and a representative of the chamber of commerce.

The CHAIRMAN. We will get to that after while. I do not think the representative of the chamber of commerce has any information to give us. Senator Shingle is an active member of the Chamber of Commerce of Honolulu and Gov. McCarthy an honorary member, and they are perfectly capable to represent the chamber before the committee.

Mr. JOHNSON. I would like to ask two or three questions. Now, Senator Wise, this morning during the testimony of Gov. McCarthy, of Hawaii, I asked him if the Japanese were buying lands over there and he said not to any appreciable extent, although increasing a little each year. During your testimony now the question was asked at one time which caused it to come out that in the disposition of a tract of land recently a large number of applications, I think, it was

905—

Mr. WISE. For 31 lots.

Mr. JOHNSON. Nine hundred and five persons applied for 31 lots to be homesteaded, and of the number that could receive lands, 25 per cent were orientals, and only a few persons were native Hawaiians who received any land under that allotment. Was that about right?

Mr. WISE. That is correct.

Mr. JOHNSON. Do you know how the Japanese came to be accepted to the number of about 25 per cent?

Gov. MCCARTHY. I may explain that. According to law, section 73 of the organic act, whenever a lease of any Government land has expired, or is about to expire, if 25 persons eligible to citizenship apply to the Commissioner of Public Lands to have that land open for homestead, the Commissioner of Public Lands is compelled to have it surveyed and cut up as homesteads. Now 25 persons may make this application, but that 25 persons can be joined up with with as many others as have the qualifications. When the land is about to be homesteaded, the Commissioner of Public Lands advertises for 60 days that a certain tract is to be homesteaded, and that applications for this land will be received at his office up to a certain hour on a certain day. The applications are made on specially prepared blanks and envelopes in the land commissioner's office. Then they have a box with a slit in it and when these applications come through the mail, as they are received they are put in this box, the box is shook up from time to time and finally the time closes, and those applications are stirred up as well as possible. Then the box is opened and each envelope is drawn. When it is opened, with a duplicate stamp they stamp the number on the envelope and on the application. The first one is No. 1. The name of that person is entered in the book as No. 1, and he has the right of first choice through the drawing. That is a lottery.

Mr. JOHNSON. Now, then, we will say there were 905, and of the whole number there were only a dozen or two Hawaiians. What is the method of selecting the 31?

Gov. MCCARTHY. The first 31 drawn.

Mr. JOHNSON. That is not like the methods of the old Louisiana lottery?

Gov. MCCARTHY. It would be the first 31.

Mr. JOHNSON. If 25 per cent of these tracts were won by Orientals, that would be in about the proportion of Orientals in the box?

Gov. MCCARTHY. I suppose so, but it might have happened that the whole 31 lots might have gone to Orientals.

Mr. JOHNSON. It must be inevitable if the leased lands are becoming available to homestead, and if Orientals are there in larger numbers than other peoples, and their children are coming into citizenship, that they will be the ones to get the homestead lands, and doubtless they are making the same effort to buy that they are making in Mr. Curry's State of California, or in my State of Washington?

Mr. RAWLINS. I am the Chairman of the Public Lands Committee of the House, and for several years was employed as assistant to the United States district attorney in Hawaii, and I have some data that I would like to submit.

Mr. JOHNSON. One or two more questions first. In your opinion, how many grown Hawaiian people are likely to want homesteads if a scheme can be devised?

Mr. WISE. Pretty nearly every one of them.

Mr. JOHNSON. How many, 15,000?

Mr. WISE. Fifteen thousand.

Mr. JOHNSON. All who have no lands will want lands?

Mr. WISE. Many of them have been discouraged from going on to homesteads because they have had no assistance from the Government.

Mr. JOHNSON. How large a tract would you favor giving to each one?

Mr. WISE. Well, we have not got much agricultural land. I should say 10, 15, or 20 acres of agricultural lands. That is first-class lands.

Mr. JOHNSON. Let us see. You have two divisions, grazing and agriculture. Ten acres of agricultural land——

Mr. HUMPHREYS. Would that be enough?

Mr. WISE. Plenty, if they got first-class agricultural lands and some grazing lands.

Mr. JOHNSON. Ten thousand Hawaiians, not the children?

Mr. WISE. No; just the head of the family.

Mr. JOHNSON. A man with a wife and seven children, you would give him 10 acres?

Mr. WISE. Ten acres if the land was first-class agricultural land, and some grazing land, too.

Mr. JOHNSON. It will be the father's right to give the land to his children?

Mr. WISE. Yes.

Mr. JOHNSON. Now, then, of grazing land you would give them how much?

Mr. WISE. They ought to have at least 250 acres; in some places it ought to be 1,000 acres. In some places you could run only goats.

Mr. JOHNSON. Could we scrape up 5,000 tracts of 1,000 acres each?

Mr. WISE. Five thousand?

Mr. JOHNSON. Five thousand. We have got to take care of 15,000 Hawaiians. We have fixed up 10,000 on small tracts of agricultural land.

Mr. WISE. I can't say.

Mr. JOHNSON. Now, then, you have 15,000 of them provided with some land?

Mr. WISE. Yes.

Mr. JOHNSON. As a gift.

Mr. DOWELL. What about your mixed blood?

Mr. JOHNSON. Leave them out. Have still further laws for their rights.

Now, then, you have got 10,000 that can not get anything, pure-blooded Hawaiians.

Mr. WISE. The census that I just read constitutes a small bunch of families. When you give the head of the family, like myself, I have got 10 children.

Mr. JOHNSON. Well, we would have to do better for you than 10 acres. You have made it clear just what I am trying to do. Now, there are in round numbers 25,000 people?

Mr. WISE. Twenty-two thousand six hundred pure Hawaiians and 16,600 mixed blood.

Mr. JOHNSON. We have provided tracts for only about 5,000.

Mr. WISE. That is all. The families are not all like mine.

Mr. JOHNSON. Do you think that if we should provide as many tracts as we could get together in one place to be designated as reservations, to which these Hawaiians could all go in the course of time and receive allotments of land, would they accept that?

Mr. WISE. Not if they lost their franchise. They want to go on settlements of their own.

Mr. JOHNSON. In order to get around this in some way, if we could get 10 tracts on one island in an agricultural place, or 20 tracts; if we could designate that as a reservation on which we could place Hawaiians on the theory that they are in need of rehabilitation, and then provide certain conditions by which they could work out the title—

The CHAIRMAN. I do not think you need to call it a reservation.

Mr. WISE. Call them settlements.

Mr. JOHNSON. Native Hawaiian settlement tracts.

Mr. DOWELL. When you give these native Hawaiians homesteads, what chance is there that they will hold these homesteads?

The CHAIRMAN. We propose to put it in the law that they can neither sell it nor mortgage it.

Mr. WISE. My resolution is to the effect that the title shall remain in the Government and that these people live there—

Mr. DOWELL. And pay a rental?

Mr. WISE. Yes; a small rental.

Mr. DOWELL. It is not to be so they can transfer it?

Mr. WISE. It is up to you people to provide that.

Mr. DOWELL. Would it be wise to permit them to sell?

Mr. WISE. No; to transfer only to their own kind. We could not divide up these lands; and if my scheme works out, and there is an increase, what are you going to do with the increase?



Mr. DOWELL. Are you going to permit these to be inherited by the children? For instance, you take a homestead of 10 acres and at your death that does not revert to the Government?

Mr. WISE. No; to my children.

Mr. DOWELL. And they may use it as they see fit, but can not transfer it to anybody else?

Mr. WISE. Except there might be a time when, say, all of my children would go off and leave me alone, and then what am I going to do with the piece of land?

Mr. DOWELL. That is the question.

Mr. WISE. When there is nobody to take the land, it should go back to the Government.

Mr. DOWELL. And be homesteaded again?

Mr. WISE. By the same class of people.

Mr. JOHNSON. Then you would never have title.

Mr. WISE. We do not ask for title.

Mr. RAWLINS. We have the same provision in our land laws now; have a lease of 99 years.

Mr. DOWELL. One other matter. I notice in the resolution that you provide for those of Hawaiian blood.

Mr. WISE. Yes.

Mr. DOWELL. How far do you go with that?

Mr. WISE. Anybody with Hawaiian blood.

Mr. DOWELL. How much do you consider to be within the resolution; what is your plan?

Mr. WISE. I contend that anybody, even to the thirty-second degree should be included.

Mr. DOWELL. And the thirty-second degree—

Mr. WISE. If he had Hawaiian blood in him.

Mr. DOWELL. Would be entitled to homestead the same as a full-blood Hawaiian?

Mr. WISE. Yes, sir.

Mr. HUMPHREYS. I do not think that would be a big problem.

Mr. DOWELL. How many of the mixed blood people are there?

Mr. WISE. Sixteen thousand six hundred and sixty estimated in 1918.

Mr. DOWELL. What are there?

Mr. WISE. Mostly white.

Mr. DOWELL. Mostly Americans?

Mr. WISE. Americans, English, Germans, Europeans, and Chinese.

Mr. STRONG. There are very few Japanese?

Mr. WISE. Very few.

Gov. McCARTHY. There are quite a number of Chinese.

Mr. DOWELL. About how many?

Gov. McCARTHY. The Chinese and Hawaiian mixture makes a fine people.

Mr. DAVEY. Suppose you take 10 acres and you have 10 children, and suppose each has 10 children, what would you do for them?

Mr. WISE. Sorry we have not the lands to give them; but why cross a bridge before you get there?

Mr. DAVEY. It is a practical question, is it not?

Mr. WISE. Yes.

Mr. JOHNSON. You have gone quite a way out on the bridge.

**Mr. WISE.** My solution of that is this: Take the money that is being gotten from the leasing of these lands. After you have assisted the Hawaiians to go on these lands some of that money is going to accumulate. My idea is to condemn some of the private lands and again cut them up, with the money that you have gotten from these lands.

**Mr. DOWELL.** One other point. Is it your idea to give the preference to Hawaiians or to make it absolute that they must be of Hawaiian blood?

**Mr. WISE.** They must be of Hawaiian blood.

**Mr. DOWELL.** And then if the Hawaiians do not take all the land that is subject to homestead, it will be leased by the Government and not homesteaded until those of Hawaiian blood want the land?

**Mr. WISE.** That is my plan.

**Mr. DOWELL.** And you have no plan by which, if they fail, that it may be homesteaded by somebody else?

**Mr. WISE.** If we have any rights to these lands, we want them for the Hawaiians; but if there are not enough Hawaiians to go on a certain tract, I would like to have the balance of that land leased by the Government to some other people and wait for the time when more Hawaiians will be anxious to go on the land and then homestead the rest.

**Mr. DOWELL.** But your position is that enough Hawaiians will want these lands in the future to absorb all of the land that is subject to homestead entry?

**Mr. WISE.** Absolutely.

**Mr. JOHNSON.** One more question. On page 20 of this presentation of the proposed amendments, you have amendment No. 4, House concurrent resolution No. 28:

So that any person who, or whose husband or wife, shall have previously homesteaded not to exceed ten acres of public lands, may be entitled to exercise an additional homestead right.

Now, would you want the Hawaiians to have that right, too?

**Mr. WISE.** That applies to all nationalities.

**Mr. JOHNSON.** So those would come along right behind the others?

**Mr. WISE.** If my resolution goes through, and favorable legislation is had by this committee and the Congress, we will be satisfied.

**Mr. JOHNSON.** All right. Then we do away with the necessity for amendment No. 4?

**Mr. WISE.** Yes.

**The CHAIRMAN.** Mr. Rawlins.

**Mr. DAVEY.** Just one moment. I would think it would be well for the senator to work out a little more definite plan for the future.

**Mr. WISE.** The only thing that makes me hesitate is to find out how much you are going to give me.

**Mr. DOWELL.** The best way is to present your plan in concrete and specific form and have that specific.

**The CHAIRMAN.** Ask for what you want and file your brief showing that we have the constitutional authority to enact the legislation you want.

**Mr. STRONG.** Ask and it shall be given to you.

**Mr. JOHNSON.** The missionaries taught that.

**Mr. WISE.** I was laboring under the difficulty that it is called class legislation, and I have had that over my head all the way here, and even to-night I had it over my head.

**Mr. DOWELL.** You will have to relieve yourself from that objection. You must present your bill and present your brief and relieve it from that objection.

**Mr. WISE.** I shall.

**The CHAIRMAN.** Nearly all recent legislation on the Federal statute books is cass legislation

**Mr. HUMPHREYS.** You can understand, Senator, when I made the suggestion that you should have a brief that it was made not with any hostility to the proposition but if it turns out, upon investigating the authorities, that we can not do that, under the law, of course it would be useless to undertake it, and have the court knock it in the head. If that is the situation then we will set ourselves to do the next best thing we can do. That is why I wanted some authorities on the power of Congress to do what you want done.

**Mr. WISE.** I am not a defender of the power of Congress, but I always figured that you could do anything.

**Mr. HUMPHREYS.** No.

**Mr. WISE.** Especially in this line. You are doing it with the Indians, and you are advocating giving lands to the soldiers. You have given lands to soldiers before this.

**Mr. HUMPHREYS.** Those points are very well taken. I want to get my own mind satisfied that we have a right to proceed in this for the same reason we are proceeding in the other, and I hope you and the Attorney General will work that out and make it clear to my mind that we have the power to do this.

**The CHAIRMAN.** You will have to explain the land laws from ancient times down to date and show step by step how the land got in the condition it is in, and I think you and the Attorney General had better get to work as soon as you can.

**Mr. KALANIANA'OLE.** Look at this, Senator Wise, these lands were owned by the Hawaiians but through a successful revolution were taken away and turned over to the United States Government, and you claim that it is a moral obligation on this Government, finding that the Hawaiians are a dying race, that something be done by the Government for them.

**Mr. WISE.** That is my expectation. I tried to show to-night that the crown lands were a portion of the lands given out in the great mahele of 1848 that were in trust for the common people, placed under the crown in trust for the common people.

**Mr. DOWELL.** Is there land in Hawaii that is subject to homestead, that is owned by the Territory, outside of these crown lands that you have referred to?

**Mr. WISE.** I do not think there is any left. They have sold all the lands that were known as Government lands.

**Mr. KALANIANA'OLE.** They were turned over from the crown and made Government lands.

**Mr. DOWELL.** To whom did they sell the lands?

**Mr. WISE.** Everybody.

**Mr. KALANIANA'OLE.** I would like to ask right there, Senator Wise, under our present land laws, how long do you think the Territory will go on before they lose every bit of Government lands?

**Mr. WISE.** Not very long.

**Mr. KALANIANA'OLE.** In fact under the present laws they are going to lose all of those lands for the simple reason that the people

have the right to apply to have them homesteaded, and in a short time there will not be any Government lands.

Mr. WISE. Yes.

Mr. DOWELL. Are these corporations buying this land?

Mr. WISE. Every chance they can get. They offered \$5,000,000 for this one piece.

Mr. DOWELL. How many acres?

Mr. WISE. Only 4,800 acres under cultivation.

Mr. DOWELL. Can you give us off-hand how much these corporations own now?

Mr. WISE. They own practically all. There is only a little left.

Mr. DOWELL. And they have bought that from the United States Government?

Mr. WISE. No; from the original owners, the chiefs and the kings, and some from the common people that got this 28,000 acres.

Mr. KALANIANA'OLE. Are all these lands formerly homesteaded by the Government owned by homesteaders now or corporations?

Mr. WISE. Mostly by corporations.

Mr. DOWELL. There is no merit then in turning it over to the homesteader if he may sell it to the corporation——

Mr. WISE. A whole lot of that has been done that way. It is only a stepping stone.

Mr. DOWELL (continuing). If we permit it to be sold as soon as the homesteader gets the title.

Gov. McCARTHY. He can not do it now without the approval of the land commissioner and the governor. A corporation or an alien can not buy a homesteader's land.

Mr. DOWELL. Now may I ask, are these transaction being approved by the commissioner and governor?

Gov. McCARTHY. During my administration we have approved but one transaction to a corporation, and it was not a sugar corporation.

Mr. DOWELL. How large a tract?

Gov. McCARTHY. About 40 acres. I might say in that connection that there were two brothers that took up two homesteads and they planted them in cane and they sold them to a corporation that was in the junk business, and the corporation itself was turning over to one of the stockholders these lands in lieu of his interest in the business. They were going to close out. I considered the whole transaction was done and I finally approved it, but I do not consider that was one of the corporations that the law intended to prohibit; that they were simply junk dealers, about five people in the corporation, and it really should have been a copartnership.

Mr. WISE. As soon as they get title to the land, they sell to the corporations.

Gov. McCARTHY. Not since 1910.

Mr. WISE. They form subsidiary companies.

Gov. McCARTHY. Not since 1910. What Senator Wise refers to occurred prior to 1910.

Mr. HUMPHREYS. In 1919, according to this pamphlet, the total assessed value of real property in the islands was \$139,000,000, almost \$140,000,000 in round figures; \$8,000,000, or \$9,000,000, in round figures, of the \$140,000,000 was owned by corporations. The total assessed value of real and personal property \$250,000,000 in round figures, and \$185,000,000 of the \$250,000,000 was owned by

corporations, and not by native Hawaiians. The Hawaiians owned \$13,000,000 plus, in real property and practically \$2,000,000 in personal property, or a total of \$15,000,000. In other words, the corporations owned 74 per cent and the Hawaiians 6.23 per cent, according to this table.

Gov. McCARTHY. And the bulk of that owned by the Hawaiians is owned by a few rich Hawaiian estates.

Mr. WISE. The chiefs.

Mr. HUMPHREYS. One thousand nine hundred and thirteen of them.

Mr. DOWELL. You spoke of the Hawaiians not having a sufficient amount of what is necessary to cultivate these lands. What provision are you suggesting by which they may obtain those in order to cultivate them? You say it is impossible for them to cultivate them without some help. To pass this legislation giving them an opportunity to occupy the lands would not be sensible, and we must, as I understand your plan, provide some way by which the Hawaiians may occupy the lands. What is your plan with reference to that?

Mr. WISE. My personal plan is to try to lease back some of these highly cultivated lands to the plantations and part of the revenue of that be given over to the Hawaiians.

Mr. DOWELL. The Territory of Hawaii to take care of that?

Mr. WISE. Yes.

Mr. DOWELL. Would you say that the Territory could take care of that by taking over those lands and utilizing the profits for the purpose of assisting the Hawaiians to cultivate the lands?

Mr. WISE. It could be done.

Mr. DAVEY. Could the Territory loan them the money?

Gov. McCARTHY. Not according to the terms of the act.

The CHAIRMAN. They ought to change the act.

Mr. WISE. We have a farmers' loan act that was passed by the last legislature—I was father to that—where a portion of the receipts of these Government lands are going to this bank and then loaned out to farmers.

Mr. DOWELL. How much will it cost for a farmer on a homestead of 10 acres, as you have suggested, to start to operate the land?

Mr. WISE. At least \$2,000.

Mr. DOWELL. And your plan is to loan him in some way this money?

Mr. WISE. Yes.

Mr. DOWELL. And how are you going to secure the loan, or are you going to attempt to do that?

Mr. WISE. Whatever he is going to do with the money, say he builds a home on it, say he buys a cow, a few pigs, and a few utensils—those things ought to be held as security for the money loaned.

Mr. DOWELL. And your plan is to have a commission whose duty it is to look after that part and see to it that the land is cultivated and that the money is used for that purpose?

Mr. WISE. A very sympathetic commission.

Mr. DOWELL. Can you get such a commission?

Mr. WISE. I think so. We can get it out of our own race. Once upon a time I thought of the Interior Department handling this, and I advocated it because I was afraid if it was left with the territorial form of government that changes would put men in there that

would not be in sympathy with the movement. So I thought of putting it in with the Interior Department here. After I arrived here and found the difficulty of getting things 6,000 miles from Honolulu, I realized it was better to get a commission in Hawaii in sympathy with the movement.

Mr. DOWELL. For the rehabilitation of Hawaiians?

Mr. WISE. For the rehabilitation of Hawaiians.

Mr. DOWELL. Are the native Hawaiians in control of your Government so that others would not get control of it?

Mr. WISE. Yes, but they have never exercised it.

Mr. DOWELL. How is that?

Mr. WISE. They have, but they never exercise it.

Mr. DOWELL. Would it not be exercised by others who are not in sympathy with this plan if you have not that power?

Mr. WISE. What others?

Mr. DOWELL. I mean the ones who would not be interested in the success of the plan.

Mr. WISE. Not if the commission consisted of people who were in sympathy with the idea.

Mr. DOWELL. You mean to provide that in the act?

Mr. WISE. In the act, and make it outside of the territorial affairs, make it distinctly outside. Then they can not interfere, except to come to Congress here.

Mr. DOWELL. Your idea is to put that in the law so that there can be no question about that.

Mr. HUMPHREYS. I want to make one statement there. I gave some figures just now. I notice here that there are not such a few Hawaiians who are owners of real estate.

Mr. WISE. There are quite a few of them.

Mr. HUMPHREYS. There are 6,000.

Mr. WISE. Yes. The lands that the Member has reference to there are lands that have been held by the Hawaiians ever since the mahele, and those that have been homesteaded since then, and city lots. City lots mostly.

Mr. DOWELL. Are you going to provide that the homesteader can not lease his homestead to these corporations?

Mr. WISE. I would not make a provision of that kind.

Mr. DOWELL. Would it be to their betterment?

Mr. WISE. It would be to their detriment.

Mr. DAVEY. Getting back to the other question just a moment, why could you not provide for this matter to be administered by the Interior Department by the appointment of a commission of native Hawaiians, under the supervision of the department?

Mr. WISE. Well, that would be all right except in the matter of changes. They would have to come over here to meet the department to get any little thing they wanted.

Mr. DAVEY. Not necessarily.

Mr. KALANIANA'OLE. Is not there a Hawaiian organization for the protection of Hawaiian interests?

Mr. WISE. Yes.

Mr. KALANIANA'OLE. Would you favor an organization of that kind?

Mr. HUMPHREYS. I think that would be infinitely better than coming over here.

The CHAIRMAN. I do not believe in long-distance government.

Mr. DAVEY. You have got to have some authority.

The CHAIRMAN. Let the authority be vested in the people on the islands who are born and live there. They understand their own conditions better than we do, and they are capable.

Mr. DAVEY. That is correct, but this plan contemplates a considerable amount of money.

The CHAIRMAN. Not from the United States Government, not a quarter. Simply providing the legal machinery.

Mr. DAVEY. Would it be the money of the Territory?

The CHAIRMAN. No; it would take the money that would probably go to the Territory as rents on leases to corporations. You might lease a thousand acres of land over there. Half of what you paid the Territory might go into this fund to be used for this purpose, not to be given to the people but to be loaned to them. That is the Senator's suggestion.

Mr. DAVEY. Here is the thought that I had in mind. If you are going to make a success of this plan you have got to safeguard it. That means you have got to throw around it certain reasonable restrictions.

The CHAIRMAN. That is what we have asked the Attorney General and the Senator to do, to formulate a definite plan and file a legal brief with us, and then we will take up the matter and see what we can do with it.

Mr. DAVEY. Suppose you select a commission of three to five. You turn over the money to them. Suppose it happens that among the representatives, like among white people, there are some dishonest men, and they do not use the money for the purpose for which it is intended. Then what are you going to do? The point is, if you are going to make a success of it you have got to safeguard it and see that it goes to the purposes for which it is intended.

The CHAIRMAN. Certainly, but you do not have to put it under an official located in Washington.

Mr. WISE. I would prefer to have it left with the local governor. If the governor was put in charge of the money he could see whether the commissioner is dealing out the money according to Hoyle.

Mr. IRWIN. That would be very much the same as our present territorial farm-loan act.

Mr. DAVEY. You create a new branch of the local government?

Mr. IRWIN. Yes.

Mr. DAVEY. You have somebody to hold responsible?

Mr. WISE. Instead of carrying it over to the Interior Department, we want to be there to watch it. We ask that it be left there at home.

The CHAIRMAN. Mr. Rawlins, how long will it take you to address the committee?

Mr. RAWLINS. It depends. I want to correct some statements made by Senator Wise, and also make a statement about the home-steading of other nationalities. I think it would take at least an hour.

(Thereupon, at 10.15 o'clock p. m., the committee adjourned until to-morrow, Wednesday, February 4, at 8 o'clock p. m.)

COMMITTEE ON THE TERRITORIES,  
HOUSE OF REPRESENTATIVES,  
February 4, 1920.

The committee met at 8 p. m., Hon. Charles F. Curry (chairman) presiding.

The CHAIRMAN. The committee will come to order. Mr. Rawlins, you may proceed.

**STATEMENT OF HON. WILLIAM T. RAWLINS, MEMBER OF  
THE HAWAIIAN LEGISLATIVE COMMISSION, AND CHAIRMAN  
OF THE PUBLIC LANDS COMMITTEE OF THE HAWAIIAN  
HOUSE OF REPRESENTATIVES.**

The CHAIRMAN. What is your business?

Mr. RAWLINS. I am an attorney at law, sir.

The CHAIRMAN. Are you interested in any business?

Mr. RAWLINS. No.

The CHAIRMAN. Just in your profession?

Mr. RAWLINS. I am practicing my profession in Honolulu.

I will confine myself principally to one of the proposed amendments incorporated in this proposed bill, House Resolution No. 28, which I introduced as a member of the legislature in 1919 of the Territory of Hawaii, seeking amendments to the land laws of the Territory relative to homesteading and the control and disposition of the public lands.

I may state that this resolution which I introduced was at the request of the Governor of the Territory, Mr. McCarthy, after consultation with him, and a joint committee from the Senate and the House as to the propriety of the matter sought to be covered by the resolution.

It met with my approval by reason of the fact that in the session of 1907 of the legislature I was a member of the public lands committee and on the termination of that session was appointed assistant United States district attorney, and for several years was interested in the condemnation of public lands of the Territory of Hawaii for the purpose of the Federal Government. Then in 1915 I was again a member of the legislature, and a member of the committee on public lands, and in 1917 I did not run owing to ill health, but in 1919 as chairman of the committee, I continued the proposition of the study of government lands and homesteading in the Territory.

I wish to start with the history of the public lands just prior to the great mahele or division of 1848. A great deal of this was covered by Senator Wise in his talk before this committee last night, but there are some matters which I desire to elucidate, some matters which I desire to make more plain to the committee, and to bring out some matters which were inadvertently overlooked by Senator Wise.

Mr. DOWELL. Before you get into this, may I ask one question in reference to this No. 28. As I read it, is not that in some way in conflict with the plan or proposition of Senator Wise?

Mr. RAWLINS. It is not, and I shall explain.

Mr. DOWELL. This, as I understand it, is to withhold and to withdraw certain of these public lands upon which the leases are now expiring from homestead rights.



Mr. RAWLINS. It does not in any way interfere with the proposition suggested by Senator Wise. Before this passed the legislature, Senator Wise's bill, senate bill No. 2, came to my committee, sponsored by Senator Wise and by the delegate. At that time there was a question in my own mind as to whether there was not a conflict, but on the statements made by Senator Wise and the delegate to Congress at that time, and which I am informed up to the present moment still continue in the minds of those two gentlemen, there is no conflict, and in going along I will show where there is no conflict in the proposition.

Mr. DOWELL. Just a moment, then you may proceed. There certainly is a conflict in the part that is withdrawn from the homestead right under your amendment.

Mr. RAWLINS. No, sir; may I explain that at this time? At the time that Senator Wise's Senate resolution No. 2 came to the House of Representatives and which resolution he spoke about last night, it was referred to my committee, and at that time I was informed by Senator Wise and also by the delegate, Mr. Kalaniana'ole, that their idea was that certain lands of the Territory, not highly cultivated lands, should be set aside for the purpose of rehabilitating the Hawaiian race; that it was not their intention, for instance, that the Kekaha lands, the highly cultivated 4,600 acres on the island of Kauai, or the 2,500 acres under cane at Wainanalo, on the Island of Oahu, should be taken and used in this rehabilitation scheme. I suggested to Senator Wise that their resolution would be strengthened if they would name in the resolution or designate in the resolution, either the character of lands desired for rehabilitation purposes, to name specific lands. That was not agreed to at that time. He felt that it was a matter that if this committee came before Congress or the Territories Committee of Congress, that the whole matter could be laid before them and the question of what lands should be taken could be decided on. There are 4,600 acres on the Kekaha plantation under cultivation. There is an area of flat land along the seashore extending about 10 miles, 3,000 acres of land, which is the best cane land in my estimation in the Territory of Hawaii. It is peculiar in this, as far as sugar production is concerned, that the cane never tassels at that place, and there are fields of cane which were plowed in 1892 and have never been plowed or planted since, and the fields are in existence to-day and yielding anywhere from  $5\frac{1}{2}$  to 7 tons of sugar per acre.

Above this are 1,600 acres of land on a flat at an elevation of 400 to 700 feet. These low lands are irrigated by artesian wells and also from surplus water that comes from the upper lands, which water has been brought on the upper lands at an expense of over \$400,000 by the plantation company by a system of tunnels and ditches of water from the Waima stream, the intake being at an elevation high enough to bring it onto the higher lands and irrigate the 1,600 acres, and it then runs down to the lower land.

In my resolution, in the last hours of the session, it was agreed, and the amendment was accepted, that this 3,000 acres on the lowland should not be leased and should not be included within the one-fifth which I propose should be leased; that that should be homesteaded. And I might state right here that my committee, if it received one resolution or petition, there were 15 or 20 sent in by the inhabitants

of Hawaii asking that this land should be homesteaded. It has always been their idea, the Hawaiians and all nationalities, that they should be entitled to participate if the Kekaha lands and that they should be homesteaded and cut into lots of 20 to 40 acres under the homestead system.

Gov. McCARTHY. I would like to say something just here. I know what brought forth your question.

The CHAIRMAN. Governor, after you have got through elucidating this point, I think we will make more time if we let Mr. Rawlins complete his presentation.

Gov. McCARTHY. I think that is correct.

The CHAIRMAN. And then we can ask him questions.

Gov. McCARTHY. Senator Wise in his explanation last night asked for more than his resolution calls for. You see his resolution, which was read at the termination of his testimony, calls for certain things. But I had a discussion with him last night and I do not believe it was intentional on the part of Senator Wise, but I think it was brought out by the different questions, that he finally asked for more than his resolution. Is not that it?

Mr. DOWELL. What I wanted last night was that this bill be drawn up and put in specific terms as soon as possible, so that we may know exactly what you are claiming, and that would straighten out the question that I was asking about.

The CHAIRMAN. There are two resolutions and we will probably have two bills. Then it will be up to us to frame a bill from the two.

Mr. DOWELL. But I must suggest that one bill if made as broad as the Senator suggested last night will conflict with the terms of this provision.

The CHAIRMAN. I do not think there is any question about that.

Mr. WISE. I read an amendment, a clause in this House concurrent resolution No. 28, that should clear that question.

Mr. DOWELL. Let him proceed. I do not want to take any more time.

The CHAIRMAN. I think, Mr. Rawlins, if you will go ahead and we do not break in on the line of your thought, we will make better progress and we can make our notes and ask questions after you get through. I think that the committee will thus get this proposition in their minds more clearly and that we will have a clearer case before the committee if the legislative commission from Hawaii first of all—they have thought this over for a long time—present their propositions in their own language and in their own line of thought, without interruption, and then afterwards we can ask all the questions we want to.

There is no question but that there is a conflict between these resolutions, but maybe we can harmonize them. I think we had better let the commission go ahead and explain the resolutions without interruption. What do you think about it?

Mr. DOWELL. That is entirely satisfactory to me. I only did this at this time thinking it would clear up in a moment, but I think the chairman's statement is the correct procedure.

The CHAIRMAN. I think we may be able to clear away the difference of opinion between certain elements of this delegation right here, but we may have to harmonize the differences ourselves when the committee meets in executive session to consider the legislation asked for by the legislature of Hawaii.

Mr. DOWELL. I think the chairman's suggestion is a good one, and that we should proceed to hear what they have to say and then ask questions afterwards.

Mr. RAWLINS. As I was about to say, I will take up the history of the lands just prior to the mahele of 1848. As stated by Senator Wise, the land was controlled by the king. He owned it under the theory of government as it existed at that time, the king owned everything by right of conquest, and as early as 1839 it was realized that the man who tilled the soil at least had some rights in that land and his rights should be recognized. In 1839 and 1840 the legislature of the then kingdom of Hawaii passed laws for the protection of the tenants.

Those laws had for their purpose, as I have stated, protection of the tenants, but they did not work out in the way they thought they would work out, and finally this practical revolution came about and the king recognized that there was some equitable interest existing in those who held immediately under him and those who tilled the soil, and he voluntarily submitted to a division of the land, and the board of land commissioners was created, and under that act in 1846, passed by the legislature in 1846, were specified lands which were to be retained by the king and lands which were to be retained by the government, and then provided that this commission of five should hear petitions and claims filed by those claiming an interest in the land, and from their decisions there was an appeal to the supreme court. This commission met and completed their labors on the 7th of March, 1848. There were 11,000-odd claims presented by those who claimed to have some interest in the land, tillers of the soil and others, the chiefs also, and the title granted by this commission was less than a freehold, with the understanding that the title should become a fee simple title on a commutation being paid to the government which would extinguish the right of the government in that land. The king at that time recognizing the justice of that, himself on the day following the mahele of March 7, 1848, voluntarily deeded to the government one-half of the lands which had been given to him in extinguishment of the claim which the government may have had in those lands, and the final and ultimate result of the division of the lands was that the crown got 1,100,000 acres of land which were to be used for the private purposes of the monarch, the government 1,413,000 acres, and the chiefs 1,647,000 acres, and the tillers of the soil 28,000 acres, as testified by Senator Wise.

Claims were filed, as I said, by any person who tilled the soil or had any claim in it. In many instances a good many people claimed the same piece. This board passed on it and awarded the title. There was no restriction on who should make claim, but they had to satisfy this commission, which was composed partly of Hawaiians.

Then between 1850 and 1860 about 0.9 of this land which had been reserved for the government of the Territory of Hawaii was disposed of. It was put up in the open market and everybody had the opportunity to bid for it, and 0.9 of that was disposed of. Then in 1851 Mr. Richard Creighton Wylie, who was then minister of foreign affairs, and the minister of the interior, Keoni Ana, presented to the privy council a resolution suggesting that it would be only fair to those of missionary descent and the missionaries, both Protestant and Catholic, who had helped Christianize the territory, that those men should

be given the right to make application to hold lands the same as other people who had enjoyed the same privileges.

This resolution was presented to the legislature of 1851 with the recommendations of these two gentlemen. They pointed out that from 1819 to 1851 there had been about \$951,000 expended by the American Board of Foreign Missions in propagating the gospel in the islands, in education, and so forth, and suggested that it would be a blot on the history of the islands if the services of these men were not recognized, and they recommended that any man who was a missionary and who had been in the service for eight years in the Hawaiian Islands and did not have 516 acres of land be authorized or be permitted to make application for enough acres of land to make it a total of 516 acres, and that he pay for that land 50 cents less per acre than it was sold to anybody else, the land to be appraised, and also further that any man who was a missionary and had not served eight years, in that case that he be permitted to purchase land and pay full market price for it. That is the history of how the missionaries got the land. It was on the recommendation of these two cabinet officers of the then king.

In 1865, as pointed out by the governor last night, the monarch having become heavily in debt, he made a trust deed, and his debts were paid by the then government of the country, and the legislature passed a law that the crown lands were inalienable, and that they could not be leased for a longer period than 30 years. At that time, or immediately following that, 425,000 acres of these crown lands were leased at an average rental of about 2 cents per acre. These leases were for long periods of time and began to expire in 1904 and 1905.

In 1884, the first homestead laws were passed in the Territory, limited to 5 acres, and subsequently the other minor amendments were made to the law. In 1893 came the overthrow of the monarchy and establishment of the provisional government, and then followed the Republic of Hawaii, which had a constitution providing that all the lands which had theretofore been known as crown lands of the Territory of Hawaii should become the public lands of the Territory of Hawaii and be free and clear of any trust or any other condition connected therewith, and the rents and profits should go to the Republic. Now, that is the method by which the so-called crown lands became public lands. The Government land had been disposed of, and at the time that these crown lands were taken over under the provisions of the constitution of the Republic of Hawaii the area was about 940,946 acres. Hawaii contained 617,258 acres; Maui, 67,510 acres; Molokai, 20,609 acres; Kauai, 154,900 acres; Lanai, 17,300 acres; and Oahu, 63,369 acres.

These figures are my own computation.

Immediately following the taking over of these crown lands by the Republic of Hawaii a land law was sought, and a commission was sent to New Zealand to study the land laws in that dominion, and the land law of 1895 relative to homesteads was passed by the legislature of the Republic of Hawaii, providing for homesteading, and in that land law was a provision for what is known as the 999-year lease, the object being, as told me by Gov. Doyle, who was then president of the Republic of Hawaii and was sponsor for this law, to get the Hawaiians back on the lands, or to give the Hawaiians the oppor-

tunity of getting the lands, and to prevent them from alienating their lands. This provision of the 999-year lease provided that they could take the land and pay a small rental to the Government, and that it could descend from father to son, and so forth and so on, but that they could not mortgage it or lease it, and if they did not carry out the terms of this provision, the lands escheated back to the Government and could be rehomesteaded.

This law was in force at the time of the annexation of the Republic of Hawaii to the United States. In the organic act, which took effect the 14th day of June, 1900, it was provided by section 99 that the portion of the public domain heretofore known as crown land is hereby declared to have been, on the 12th day of August, 1898, and prior thereto, the property of the Hawaiian Government and to be free and clear from any trust concerning the same, and from all claims of any nature whatever upon the rents, issues, and profits thereof, and that it should be subject to alienation and other uses as may be provided by law, and also provided by section 73 that the laws of Hawaii relating to public lands could continue in force until Congress should otherwise provide.

So the land law of 1895 of the Republic of Hawaii, upon the 14th day of June, 1900, when the organic act took effect, was in force as part of the organic act. That law continued until 1910 with some minor amendments. In 1910 the law was amended; the organic act was amended in several particulars, which if I may be pardoned I would like to call to the attention of the committee. One amendment provided "that all leases of Government lands should contain a provision for homestead purposes, allowing for withdrawal of such lands from the operation of any such lease."

Up to this time the Government land could be leased and was leased. The administration of those days was not very sympathetic toward homesteading, and following this amendment every lease of Government land contained a provision that it could be withdrawn for homesteading purposes at any time, and among those amendments was one that if 25 citizens of the United States, or those eligible to become citizens, should make application to the Commissioner of Public Lands for the opening of lands under lease or where leases were about to expire, that he should immediately have them surveyed and thrown open to homestead purposes.

Another amendment was—

That no person who, or whose husband or wife, had previously exercised his or her homestead right, should therefore be entitled to exercise additional homestead rights.

That prevented a man and his wife getting two separate homesteads. They wanted to have an opportunity for everybody to get one.

Another provision was:

Against the sale or other disposition of homestead lands without the consent of the land commissioner and governor.

And another:

For the forfeiture of such homestead lands in case of violation of certain provisions of the land law or of the homestead agreement.

For the determination by lot of the persons entitled to occupy public lands in the various forms of homestead agreements.

For the granting of preference rights.

Against the sale of public lands for other than homestead purposes except in certain specified cases and in limited areas.

Against the lease of public lands except as limited by the act.

For the exchange of public lands for the acquisition of private lands for public use by limiting such exchange to forty (40) acres in area and five thousand (\$5,000) dollars in value.

That upon application by twenty-five (25) citizens, it should be mandatory on the land commissioner to homestead certain areas of public lands.

For the creating of a territorial land board.

These amendments were passed in 1910 by Congress and there seemed to be an impetus toward homesteading. Large tracts of land were opened up and my computation is that between 83,000 and 84,000 acres of lands have been homesteaded since the amendment to that law.

I have computed, under the law before it was amended, a list of the homesteaders by nationalities, by area, and by value per acre of those who were successful homesteaders from the passage of the land act in 1895 to this amendment in 1910, and my figures are as follows:

Race.	Number.	Area.	Average value per acre.
		<i>Acres.</i>	
Hawaiian.....	1,024	28,838.80	\$1.78
Portuguese.....	514	18,038.67	8.67
American.....	430	25,618.78	9.19
Others.....	242	15,830.42	6.29

Since the passage of these amendments in 1910, 83,000 and some odd acres of Government lands have been homesteaded, and experience has shown us that there are a good many things that should be changed in the present law with reference to homesteading, and I might while I am on this question show who has taken the homesteads. Since 1910 to June 30, 1919, homesteads have been taken by the nationalities as follows:

Race.	1911	1912	1913	1914	1915	1916	1917	1918
Hawaiian.....	132	242	150	93	90	57	89	106
American.....	16	76	45	64	21	4	8	19
Portuguese.....	17	121	72	47	37	20	24	99
Japanese.....		25	16					

For the first time in 1912 we found the Japanese coming in, when they made application and were successful in securing 25 homesteads, and in 1913 the Japanese got 16; and others, including the Chinese, who took 3 in 1912, 24 in 1913, and it ran along—in 1915, 28; 1919, 22; and the whole thing shows that the majority of these homesteads from 1895 to 1918 were taken by Hawaiians, which I claim shows that our people have a desire to acquire lands and to go in for farming pursuits.

As I have stated, experience shows us that there are certain amendments required. Now, in this Kekaha land, which is under lease, there are 4,600 acres of land which are highly cultivated, which are under cane, and as I have suggested before, they are the finest cane lands in the Territory of Hawaii. The lease expires on this land June 1 of this year, and the legislature is swamped with petitions and requests that the commissioner of public lands and the governor

be directed and authorized immediately upon the termination of this lease to open these lands for homestead purposes. Those who presented them were told that the law provided how these lands should be opened, if 25 citizens of the United States should petition to have them opened for homestead purposes.

But I feel and others feel that as this land is cane land the best interests of the homesteaders would be to continue raising cane there. In other words, it would be futile for them to do away with the cane crop and try to raise any other crops, because the land is especially adapted to raising cane. It is the only land where in 1892 the field was plowed and the cane put in there, and the cane that was put in there is there to-day. All he has to do is to irrigate and cut his cane and wait for it to grow again; and to allow a man to raise cane on it with no mill to grind and no labor to harvest it is a foolish proposition. So the idea is this, in reference to the 3,000 acres when it is homesteaded: We can insure the man who is raising cane that he shall have a place to grind his cane at the mill. The Government could not operate a mill; under the terms of the organic act the Government could not conduct a sugar mill.

The CHAIRMAN. It owns the mill.

Mr. RAWLINS. Yes, but there is no authority under the organic act which would permit them to continue in the business of milling. And then in order to harvest crops labor is required. You take the Kekaha plantation, there are approximately 1,100 laborers employed on this plantation. My idea in this amendment is to take one-fifth of this area, that is the upper lands, and to lease it to the plantation under terms and conditions, together with the mill site and the mill and camps and stables, the lease to be for a period of years to be decided upon and put up at public auction to the highest bidder, and in that lease to be contained the provisions under which the mill is to deal with the homesteaders with reference to the price of cane and so forth. If that provision is in there, the man who has the cane land is sure that the mill is there to grind his cane when his crop is ready and he will know what he is to receive for his cane. He knows that the mill company that has that lease has got to live up to the terms and conditions of that lease with the Government, and also when it is an off season, when they are not grinding at the mill and the man who is homesteading has use for the labor that is employed in the mill, he can make use of that labor. In order to insure the mill company there and the people putting their money into the proposition, to keep the mill there, it is only fair that the mill should have an area which would insure the mill getting the cane to grind from their own area, and to have a place where the men who are employed by the plantation could be kept near the mill, because this plantation labor proposition is a floating population. If you get rid of them one time, it is hard to get them back.

That is the first amendment, providing:

So that when any general lease of highly cultivated public lands shall expire, the governor and the land commissioner of the Territory of Hawaii, may in their discretion withdraw from the operation of the homestead laws of the Territory as now existing not to exceed one-fifth of the area of lands covered by any such general lease, and to lease the same by sale at public auction for a term not to exceed fifteen years upon such terms and conditions as may be advantageous to the Territory of Hawaii.

That is one amendment.

Mr. DOWELL. Are you through with that amendment?

Mr. RAWLINS. Yes, sir.

Mr. DOWELL. Is this the proper place to ask questions or shall we wait until you get through?

The CHAIRMAN. I think this would be the proper place, although I do not know whether other amendments refer to this feature.

Mr. DOWELL. I do not know what one he takes up next. I am perfectly willing to wait until you get through. I think that might be better.

The CHAIRMAN. How many other amendments are there?

Mr. RAWLINS. Seven. They are very short.

The CHAIRMAN. Do they have any bearing on this homesteading?

Mr. RAWLINS. Yes, sir; they are all with reference to homesteading and the taking up and the development of land which is arid and can be developed for homesteading purposes.

Mr. DOWELL. I suggest then that he complete his statement.

The CHAIRMAN. If it all refers to homesteading, I think he should.

Mr. RAWLINS. Another amendment suggested by this resolution is with reference to arid lands, of which there are several thousand acres in the Territory. On the island of Molokai there are 15,000 acres of Government land which are capable of being cultivated, and on Kauai 7,000 acres, a total of 22,000 acres. The water on the island of Molokai is on the windward side of the island and in order to get it on these 15,000 acres it will be necessary to expend about \$2,000,000 to bring that water there. Some years ago an effort was made to start a plantation. They drilled artesian wells, but they pumped salt water with the fresh. It is now under lease and used as a cattle ranch. The amendment suggested there is (reading):

In the case of arid lands which are capable of being converted into agricultural lands by the development of underlying and or contiguous waters for irrigation purposes, the governor and the land commissioner may lease such arid lands to any person, firm, or corporation upon such terms and conditions as may be of advantage to the Territory of Hawaii, and for a sufficient length of time to induce such person, firm, or corporation to invest capital in the development of the said water resources for the irrigation of said land, such lease to be without the withdrawal clause as provided for by law.

Now as I said before, every lease of Government land at present contains a provision that it may be withdrawn at any time for homestead purposes, and it can be plainly seen that the 15,000 acres which it costs \$2,000,000 to develop, the Government is not going to be able to lease that to individuals, because they are not going to put \$2,000,000 into a proposition and then have 25 people petition for that to be homesteaded. Nobody would ever go into a proposition of that kind, and the land would not be developed. Now this amendment proposes that this land be leased at public auction, and at the termination of that lease, the Government has received a fair rental and you have 15,000 more acres there ready to be given as homesteads. In other words, the Government receives an income under the lease of the land to somebody else and the corporation or person that has it has made it suitable for the raising of crops, and then at the end of this time, say 15 years, you have got 15,000 acres more to throw open for homesteading.

Right at this point I may state that this 15,000 acres on the island of Molokai, I learn in consultation with Senator Wise, is land which I understand he believes should be reserved for the Hawaiians. I have no objection to that, and I do not think anybody else has. The only point is this, if it is to be reserved for Hawaiians, we have



got to devise some ways and means of raising the funds, of bringing the water on the 15,000 acres, so that those who live there can support themselves and those who are dependent upon them. Several experts have gone into the question and as I have said before it takes \$2,000,000 to bring that water there. The Territory of Hawaii has not the money, and if this land is sought to be included in Senator Wise's proposition, as I said before I have no objection, and I do not think anybody else has, but care be must taken as to these people who get this land, because you might as well put them out in the hall and tell them to homestead that when you have not got water on this particular 15,000 acres of land.

Another suggested amendment is (reading):

When any general lease of agricultural lands is about to expire, or has expired, or when any homestead lots are not taken up, or taken up and abandoned, the land commissioner with the approval of the governor may be authorized to enter into a contract with any person, firm, or corporation for the continued cultivation of said agricultural lands, available for homesteading, or until such time as the said homestead lot or lots shall be again occupied by a homesteader or homesteaders, and to require of such homesteaders who thereafter shall occupy said lands, that they reimburse such person, firm, or corporation for the expenditures so made in continuing the cultivation of said land.

The purpose and purport of that is—you take, for instance, the Kekaha lands that I have spoken about on the island of Kauai, the lease expires on the 1st of June this year. Now, the lessee is entitled to the possession of these lands up to the last day of that lease, and before it can be homesteaded it has got to be surveyed and everything, and it takes several months to get it in shape for homesteading purposes. Now the purport and idea of this is to permit the Government at the expiration of this lease, to permit the Government and the Commissioner of Public Lands to let the plantation or the tenant who has the place to continue to cultivate this land while these matters preliminary to homesteading are going on, so that when the homesteading is ready and the drawing is made, the man goes on the land and finds it in a continuous state of cultivation, and he does not have to retill his soil or to spend his time digging weeds from it and getting it in shape. The tenant passes it right over to him. As soon as he draws his lot he gets a highly cultivated piece of land, and the plantation is entitled to be reimbursed for the labor and the fertilizer and the labor put on that land.

That is following out, as I recall it, the suggestion made when Secretary Lane was in Hawaii. There was a lease that was about to expire, and if a plantation had dropped it right then and there, there would have been thousands of tons of sugar which would have been lost, and by presidential proclamation, President Wilson authorized the continuance of that so that when it was homesteaded the people went on the land and found the cane there and stepped into the shoes of the plantation and continued.

The next amendment is (reading):

So that any person who, or whose husband or wife, shall have previously homesteaded not to exceed ten acres of public lands, may be entitled to exercise an additional homestead right.

When homesteading was first gone into, the areas of homesteads were very limited. It was thought that 5 or 10 acres was sufficient for a family. Experience has shown that 5 or 10 acres of land in

the Territory of Hawaii is not sufficient for a family, but under the organic act as it now stands it provides that any man who has drawn a homestead, irrespective of what the area is—there is a limit on the area—but if he draws 10 acres he can not draw another homestead. If he has drawn a homestead and has not lived up to the conditions of the homestead law, abandons that homestead, he can never draw again. The purpose of this is if he has 10 acres and that is not sufficient he can draw an additional amount large enough for his family.

The next amendment is (reading):

So as to authorize and empower the governor, the land commissioner, and the land board of the Territory of Hawaii, to exercise the power and right of selection of homesteaders in all cases of applications for homestead lands, and the right and authority to pass upon the qualifications and capabilities of any such applicants as homesteaders of such lands.

The purposes of this are many. It has been our experience recently in homestead drawings that people draw who are not in position to make an application. They put their application in an envelope, put on a 3-cent stamp and put it in the box provided for these applications, and if they draw and are successful then they rush around to their friends to borrow the money to make the initial payment, and then make no effort to carry out what the purport of the law is, or to handle this land to their own advantage or to the advantage of the Territory, and in a good many cases it is simply a matter of speculation. For instance, on the island of Hawaii a policeman put in an application for a homestead. Apparently he had no intention of taking a homestead, but he had the first number and after he had drawn his homestead, why others who followed were in a worse position in the matter of right of selection, and if they could get him out of the way they would have the first choice which would move them up. They paid him \$850 not to take a lot.

Mr. JOHNSON. Did the others combine and contribute, or was it some one person?

Mr. MCCARTHY. One person bought his right.

Mr. JOHNSON. Instead of paying him not to draw, somebody bought his right?

Gov. MCCARTHY. Yes.

Mr. RAWLINS. He was No. 1, and No. 2 wanted a certain lot, and in order to be sure to get it, he paid \$850 for the privilege.

Mr. JOHNSON. Was that permissible?

Mr. RAWLINS. That is what they can do under the law.

Mr. JOHNSON. If No. 1 sells his right, then they have no No. 1? Or, rather, do the others move up?

Mr. RAWLINS. We will say you are No. 1. You are the first man. I draw, and I am No. 2. I may have my eye on a certain lot, and you tell me that you think that you want that lot. Now, I will tell you, "Well, here, I will give you \$1,000 if you will not draw a lot at all." Then you do not appear. I am the next man, and I get that choice, and I take that lot. That is the way it is worked.

Mr. JOHNSON. No. 3 moves up and takes what you had as No. 2?

Mr. RAWLINS. He might; they keep raising the ante. As pointed out here, in the last drawing of homesteads there were 31 lots and 905 applicants for these lots.

The other amendment is covered by resolutions 28 and 43, providing for preference rights to a man who has lived on public lands since January 1, 1909. Those provisions are [reading]:

•So as to allow any citizen to exercise a preference right who has, or whose predecessors in interest have, continuously resided on and improved any parcel of public land since January 1, 1909 (H. C. R. 28), and so that in any case where a citizen would have been entitled to a preference-right grant but for the fact that the land previously occupied by such citizen has been reserved for public use, the commissioner, with the approval of the governor, may grant to such citizen applying therefor a preference right to purchase an equal area of public land of similar character and value situate elsewhere in the same land district (H. C. R. 43).

As the law now stands a person applying for a preference right must have been a resident on the land since April 30, 1900. Under this proposed amendment it is proposed to raise the period from April 30, 1900, to make it January 1, 1909, so that any man that has lived on Government land since January 1, 1909, and improved it should have a preference right to make application—that is, preference right to people of small means who have been on the lands as subtenants, or somebody who has had it from the Government. As it is now, if the land is put up at public auction, somebody might bid over the man who had built up the place.

Those are the principal amendments. Another one, the last, is with reference to pastoral lands. The law now provides that you may get land up to, I think it is 80 acres, for pastoral land, and that is insufficient for any man to go into stock raising. We want to get the small stock raiser on the lands. This amendment proposes that a man should be entitled to make application for up to 1,000 acres of land for pastoral purposes. In some places on the islands 250 acres would be more than sufficient for a man of moderate circumstances to go into that line of business, but on another island 1,000 acres would be too small. But the committee thought that the thousand acres would be sufficient.

Those, gentlemen of the committee, are the proposed amendments that I have named in my resolution which the legislature passed and has forwarded to this committee for its consideration.

The CHAIRMAN. Have you completed your statement?

Mr. RAWLINS. I have, sir.

The CHAIRMAN. Mr. Dowell.

Mr. DOWELL. I will let Mr. Johnson proceed.

Mr. JOHNSON. I had one question. I can not cover all of these proposals. They came a little too fast. But I am interested in amendment number 5, "to authorize and empower the Governor, the Land Commissioner, and the Land Board of the Territory of Hawaii to exercise the power and right of selection of homesteaders." That is what it amounts to, the board is to find the preferred man so that rather than lottery, the board might authorize a list of 1,000 persons to apply we will say, and then the board would look them over and select the winners, pick out a few. Is that it?

Mr. RAWLINS. That is not the idea. We would still have the drawing, but his qualifications and as to his ability to carry out the purport of the law and everything else are matters for the board.

Mr. JOHNSON. Then, we go on with the lottery and a thousand persons put their applications in the box and you have got 100 awards to make, and you select a little board here now of competent

officials to make the awards. It says here in part of the pamphlet that you have presented, page 22, last half of the page (reading):

In a recent drawing held in the Territory, there were 261 lots to be opened for homesteading, for which there were 2,905 applicants. From those 2,905 applicants there could undoubtedly have been selected 261 citizens who could have added very materially to the industrial prosperity of the community if they could have been selected from the mass of 2,905. The incapable ones, and those who theretofore had made a complete failure in life, had an equal opportunity at the drawing with those who had the qualifications for success.

Now, do you think that it would be conducive to good feeling in any locality for any board of 5 members to select among 100 those to whom ought to be given the preference?

Mr. RAWLINS. Well, it might create some feeling.

Mr. JOHNSON. Would it not be certain to create feeling?

Mr. RAWLINS. It would.

Mr. JOHNSON. Would it not put the board in the attitude of designating John Doe as incapable of operating a farm?

Mr. RAWLINS. The board would not be limited to a proposition of that kind.

Mr. JOHNSON. Let me see if I have it right. One hundred men went into the lottery. If there are 100 pieces of land they are winners.

Mr. RAWLINS. No, sir. For instance, you take this 900. All the names were in there, and they drew them out of the box, and they are numbered as they are drawn out from the 905. Everybody is entitled to draw. Now they call on man No. 1. He is Senator Shingle. He does not appear. Then they take the next one. As I recall it they went through this list of 905 three times and there were still three or four left there on the list. There were numbers on the list that had not even drawn.

Mr. JOHNSON. They were not interested?

Mr. RAWLINS. They simply put in their application.

Mr. DOWELL. Now with reference to this reservation, in the first resolution, of one-fifth of the land, at the expiration of the general lease. Now as you explained that that is for the purpose of furnishing a market for the homesteaders who have homesteaded the land surrounding this tract. Is that correct?

Mr. RAWLINS. The mill where he would have his produce ground into sugar.

Mr. DOWELL. At the present time where they are making leases to these mill companies, are they not the larger ones that are holding these leases?

Mr. RAWLINS. No more leases are being made to mill companies. These are leases made years ago which are now expiring.

Mr. DOWELL. The mill companies are holding these leases now?

Mr. RAWLINS. Yes, sir.

Mr. DOWELL. You would take a portion of the land occupied by the mill company at the present time and lease to the mill company?

Mr. RAWLINS. It would be one-fifth of the cultivated area of the land under lease to the mill company.

Mr. DOWELL. That would be depriving them of four-fifths of the land that they now use for milling purposes?

Mr. RAWLINS. Yes, sir.

Mr. DOWELL. What effect will it have on the milling company to take from it four-fifths of the land that it is now using for milling purposes?

Mr. RAWLINS. Well, I do not think it could have any effect on them because I have gone into that matter. For instance, I have asked some of them connected with these mills if they would be satisfied with that, because it gives them several things to be considered. First, the mill is there, the homesteader has a place to have his cane ground, and under the lease made between the Government and the milling company, terms can be incorporated under which cane is to be ground, and it gives the mill, and those who own the mill or have put their money into the milling proposition, have a guaranteed crop, and it gives the milling company an opportunity when there is an off season of taking the labor from the mill and putting them in their leased area and also renting out this labor to homesteaders to cultivate their cane. In other words, it stabilizes the labor supply at that particular point.

Mr. DOWELL. How long does it take to raise a crop of cane?

Mr. RAWLINS. In this particular place it takes anywhere from 14 to 17 months. It all depends upon the altitude. The general system is this: They plow and plant once, I should say, in five years. The cane grows, it is cut down, that is ratooned twice, and at the end of the fifth year, or a little over, it is plowed again. On this particular plantation they do not do that. There are fields there planted in 1892, on which, when the cane is cut down, it grows up again and they cut another crop. The plantation is divided into three areas. Take a plantation of 1,500 acres. It would be divided into three areas of, say, 500 acres each, and this season the crop will be taken from one 500-acre tract, from another 500-acre tract the next season, and from the third 500-acre tract the next season. They keep rotating with the crops.

Mr. DOWELL. Can not the homesteader raise these crops in the same manner that the mill owners are raising them now?

Mr. RAWLINS. Yes, if he pays attention to the land and puts his heart and soul into the land.

Mr. DOWELL. Are these homesteaders who have taken these homesteads raising these crops in the same manner?

Mr. RAWLINS. In this particular piece that has not been homesteaded, but in other places in the island of Hawaii—I can speak of an individual Portuguese. He worked on a plantation at \$1.25 a day. He afterwards acquired a homestead, and with his plantation knowledge gained as a laborer he has been a very successful homesteader and cane grower. His crops are of the best, the same as on the plantation.

Mr. DOWELL. If that is true, then why not homestead all of this land and permit the homesteaders to furnish the mills with the cane, and will not the companies buy the crops if the homesteaders have the land to raise the crops?

Mr. RAWLINS. Well, that could be done, that is practically what is done in Waiakea, but there has been a great deal of disputing and arguing between the cane growers and those who have homesteaded. I think that under this system it is more beneficial to the homesteader. He knows what he is to do with his cane when he has grown it and what price he is to get for it.

Mr. DOWELL. If part of this is good for the homesteader why is it not all?

Mr. RAWLINS. All of the land?

Mr. DOWELL. Yes; if he raises the same crop on the homestead, and they are willing to take the homestead, there is just as much security to the mill owner that he will have the crop as though the mill owner farmed it himself.

Mr. RAWLINS. If the whole 4,600 acres is homesteaded, there is no mill there and no place to grind the cane of the homesteaders if they are not in a position to put in a mill. The Government acquires the mill, but the Government is in no position to run the mill or to assist these homesteaders. And then again the labor question comes up.

Mr. DOWELL. Will not the mill owner run the mill wherever there is sufficient crop so that he can make his profit?

Mr. RAWLINS. There is only one instance of that that I know of, and that is a new thing that has come up in the islands, for the first time this year, in Waeakea, which was homesteaded. There are all kinds of dissensions between them.

Mr. DOWELL. The way it is now the mill owners themselves are using these lands, they are not taking the cane from the homesteaders? They are doing it all themselves?

Mr. RAWLINS. Yes, sir.

Mr. DOWELL. Your purpose is to change this program, to put these into the hands of the homesteaders?

Mr. RAWLINS. Yes, sir.

Mr. DOWELL. And let them feed the mills from the crops they raise. Now if they can raise these crops the same as the mill owner, why will not the mill owner run his mill and do the work for the homesteader the same as though he was farming it himself?

Gov. MCCARTHY. Explain how these plantations establish camps, labor camps on the plantation and keep the labor there.

Mr. RAWLINS. These plantations cover several thousand acres, and this plantation of 4,600 acres of land has a working force of 1,100 men. They have to keep that 1,100 men employed. The homesteader, when it comes cutting season, can not cut his cane himself. He has to have labor. Now plantation labor or any labor is going to the place where they can get steady employment. They are not going to stick around waiting for the homesteader's crop to come, or wait for the mills to start up, and the mills, in order to have efficiency, have to have trained men, and in order to have efficiency in production of sugar, you have to have trained men and an individual homesteader is not in a position to keep a force of 15 or 20 men on his place the year round in anticipation of his cutting, and that is one of the reasons why he would be unsuccessful.

Mr. DOWELL. One other question. These 22,000 acres of arid lands, your idea is that they should be leased for 15 years in order to get the water on this land?

Mr. RAWLINS. Yes, sir.

Mr. DOWELL. Is there anyone there who will place this water on the land and invest the \$2,000,000 on a lease of that character.

Mr. RAWLINS. I think there is, if they could be assured that they could have the land for 15 years and develop that land, spend their money on it and make it productive for sugar or other crops, that they would be willing to do that, that they would get a fair income on the investment and they would know that they would have it for 15 years not subject to be taken away from them.

Mr. DOWELL. Have you any parties that have made such an offer so that you can assure the committee that such a plan would be adopted?

Mr. RAWLINS. No, sir. Perhaps the governor has.

Gov. McCARTHY. In this particular instance that he mentions, the Molokai lands—

Mr. DOWELL. Twenty-two thousand acres?

Gov. McCARTHY. Fifteen thousand acres on Molokai and 7,000 acres on Kauai, while we have not any direct offer in connection with those two places, on Kauai, where the Makee sugar plantation is located, there is a large area which the Government has homesteaded, and there is another area which the Government is about to homestead. There have been four series of homesteads there, one that we opened in December of last year. In the mountains back of that land rises a river. Part of the water is used for irrigation, but a very large part goes down into the river and runs into the sea and does nobody any good.

During the administration of my predecessors arrangements were sought to be made by which this water could be conserved and put on the land. But you had on the one side the plantation interests and you had on the other the homesteaders. They could not come together. They have made efforts for four or five years to get together so as to conserve that immense body of water which is running to waste every day. During the last year they had a drought on that island and this drought has brought everybody down there to their senses. The result is that we are now working on a proposition by which the plantation people, not as a plantation, but they intend to organize a holding company that will develop a water system, taking this water at its source and by ditches and tunnels and reservoirs spreading it over the land. They intend to organize a company and the company is to have 6 or 7 per cent interest on the money invested. The rate has not yet been decided.

Mr. DOWELL. Who pays this?

Gov. McCARTHY. I will get to that. They intend to put in about a million and a half dollars on this water system, whatever it costs, and the Government is to have supervision over the amount of money invested. They are to get 6 or 7 per cent interest on the capital invested. There is to be set aside a certain amount of money to provide a sinking fund to wipe out the capital. The Government is to get a dollar a million gallons, and then there is the overhead for maintenance—the maintenance, interest, sinking fund, and the dollar a million gallons to the Government, a certain amount of money. Now, there is a division as to whether they will take the total number of million gallons of water and divide this overhead by that to find the cost per million gallons, or whether they will take the total area to be irrigated by this system and divide the overhead by the number of acres and then charge each acre of land so much per annum. Now, we are pretty nearly together on that. I am just telling you this to show how the people on the islands will invest their money in an irrigation project if they see any chance of final success.

Now, in this Kauai proposition, after the sinking fund has wiped out the invested capital, the irrigation works become the property of the Territory. I expect that shortly after I return all the details

will have been worked out, so that the homesteaders and the planters and everybody concerned will be satisfied.

Mr. DOWELL. That is to be in good working order at the time it is turned back?

Gov. McCARTHY. The maintenance covers that.

Mr. DOWELL. And the Government would own it at the expiration of the lease?

Gov. McCARTHY. Yes; that would be exactly the same proposal as for the Molokai lands. Now, last August the land commissioner, the head of the forestry division, and myself made a trip up on the highlands of Kekaha. The Kekaha lands, which have been spoken of frequently to-night and last night, have about 3,000 acres on the flats and 1,600 acres a little higher up. Those 4,600 acres have been cultivated. Higher up is a large area belonging to the Government which is fully capable of cultivation if the water could be led on. But there will have to be considerable capital invested there to lead this water and to get all the water down to the 1,600 acre area. The island of Kauai is a mountain, and at the summit of this mountain is the greatest recorded rainfall of any place in the world. We know of 600 inches in a year, and that particular year there was more rain than 600 inches, because the last time they overhauled the rain gauge it was overflowed.

I want to explain about this water. The top of this mountain is a marsh. The highland is like a spider, and between the legs, out of each one of those gulches, come the rivers. In some places these rivers carry the water out to sea without doing anybody any good. We believe that there is sufficient water there to irrigate every acre of land on the island.

Mr. DOWELL. That is not being utilized now, that 15,000 acres?

Gov. McCARTHY. Part of it is. That river comes to a place where they can tap it.

Mr. DOWELL. How much of the 15,000 acres is now being utilized?

Gov. McCARTHY. The 15,000 is on another island.

Mr. DOWELL. That is not being utilized?

Gov. McCARTHY. No. Mr. Rixenburgh, the land commissioner, and myself went over that land a year ago last October, and all the islands have a queer formation. The rain falls on the windward side.

Mr. MONAHAN. What do you mean by the windward side?

Gov. McCARTHY. The northeast side. The mountains on that side are almost precipitous, and at the base of the mountain there is only a small area. That is where all the water falls, and the great rolling lands for cultivation are on the lee side, and it is necessary to tunnel in order to bring the water from the wet side to the dry side. On the island of Oahu, where Honolulu is situated, a company there spent \$2,000,000, and they tunneled  $3\frac{1}{2}$  miles through the mountains. Altogether they have 9 miles of tunnels, and they bring the water from the one side to the other side. I am explaining this to show that in case capitalists were permitted to lease these lands without the withdrawal clause they would invest their capital.

Mr. DOWELL. Have you authority now to lease these lands.

Gov. McCARTHY. Yes; we have authority to lease them, but if any 25 people having the qualifications of homesteaders apply to the commissioner to open them up, he has no discretion in the matter.



Mr. DOWELL. In other words you can not make your contract for the establishment of this plan unless they can get the use of all those lands for a certain period?

Governor McCARTHY. And have it for a period of time sufficient to make it worth while for them to invest their capital without having it taken away from them as soon as their capital is invested.

Mr. BROOKS. If they invest their capital in the irrigation of that arid land, would they also put up mills?

Governor McCARTHY. Undoubtedly.

Mr. BROOKS. They would?

Governor McCARTHY. Undoubtedly.

Mr. BROOKS. I was going to ask this question. If that arid land should be irrigated, and should be homesteaded by the natives, what would they do with the cane? Of course I see now that if this proposition went through, then this company would put up the mills and the homesteaders could take their cane to these mills, or if that would not be done, and the homesteaders would be given those lands and they would farm them, raise cane, they would have no mills.

Governor McCARTHY. They would have no mills.

Mr. BROOKS. To take their cane to.

The CHAIRMAN. Is that exactly accurate, that they would have no mills?

Governor McCARTHY. There is no mill on the island.

The CHAIRMAN. Will not the mills belong to the Government at the expiration of the plantation leases?

Governor McCARTHY. That is another island.

Mr. DOWELL. That question has been discussed here. I want to ask one question to ascertain what the fact is. If the farmers farm these lands and raise these crops, and all of this land that is now being discussed were under cultivation by the homesteaders, would not that bring to the locality a mill or sufficient mills to take care of the crops?

Governor McCARTHY. It might. But there is this to be considered, we have homesteaders and homesteaders. I might cite an instance. In a large plantation on the big island of Hawaii, the land was Government land and was leased to the plantation. Finally some of the land was cut up into homesteads, and it would make your heart bleed to go on the highroads, the roads of the highest elevation, and look down over those lands. They look like a checkerboard. Here you would see a field of cane just as good as the plantation raises, because the man who had that took that homestead with the idea of staying there and producing something. There is a lot just next to it that was grown up with weeds. That would require a lot of cultivating. So that there were good homesteaders and poor homesteaders.

The man that would look after the land could make money, and some of these people went on without any capital, without any credit, without any reputation, and succeeded. I may say here that the plantations have generally been willing to advance the money to these homesteaders to make the lands productive, because all is grist that goes to their mill, and as they have there a mill with a certain capacity, they want to get all the cane possible. There are many places where the homesteader has taken a place and gotten an advance from the plantation to put up his house. He wants to sit

and watch the cane grow, does not want to do a productive bit of work, and that is the reason why there are so many of these lots that are producing nothing. I am kind of getting off this subject.

Mr. BROOKS. I am not quite informed on one question yet, if you will allow me, Mr. Chairman. In these sections that you propose to homestead, are there cane mills at the present time?

Governor McCARTHY. Well, in Kekaha, which we propose to homestead—

Mr. BROOKS. Then there are not cane mills in all these sections that you propose to homestead?

Governor McCARTHY. I may say that on the lands to be homesteaded, that we know of just now, there are only two sections and there are mills on both sections.

Mr. BROOKS. Would it not be necessary first to make some provision for mills to be established before homesteaders begin work on their lands, because if mills were not provided, these homesteaders would go on the land and produce cane, and would have no place to take it?

Governor McCARTHY. The only two sections which we are about to homestead are Kekaha and Waimanalo. In Waimanalo there is a mill which is an old mill and it is on fee simple land. As it is an old mill the company does not feel like putting it in up-to-date shape on account of the short tenure of the lease. The other one is the tract which has been frequently spoken of, Kekaha. It has a mill on it, and it will cost \$750,000 to put that mill in an up-to-date condition so that they can get the same extraction as the present big mills. That mill in its present condition will become the property of the Territory at the expiration of the lease. There are only those two tracts, and there are mills on both of them. We have 15,000 acres on another island, but there is no mill there.

Mr. BROOKS. Arrangements should be made to establish mills before homesteading?

Gov. McCARTHY. This 15,000-acre proposition it would be useless to plant, because there is no water there. If this amendment should go through, and we would be permitted to sell at public auction, and lease for 15 years without the withdrawal clause, then the people buying it would develop the water and erect a mill.

Mr. BROOKS. They would do that?

Gov. McCARTHY. They certainly would.

Mr. SHINGLE. Could I explain that point to the Congressman? I would like to say, in the Philippine Islands the people have been growing cane for many years and have been manufacturing their sugar in the old crude way. Since the American occupation over there, American capital has gone in and put up centrals in localities where there is a place where there are a lot of individual planters. Those planters grind the cane in a crude way, and when they put up these new mills, they get a contract with the Philippine planters to run their sugar through the mill. They get bigger extraction and the thing has been a success in the Philippines. But in the Hawaiian Islands, where they have had these long leases of Government lands, and the water has to be supplied by the manufacturers, there is a sort of hiatus that they can not get around, and as the governor explained the other night they put a sugar expert on his staff with the idea of trying to bring about a situation along the line that Congressman Dowell has been driving at.

The CHAIRMAN. Mr. Humphreys, have you any questions to ask?

Mr. HUMPHREYS. I think one or two. Most of the questions that I jotted down have been answered. I would like to know what the cost of a mill is. For instance, take the mill that would have to be built on Molokai to take care of the 15,000 acres. What would such a mill cost?

Mr. SHINGLE. With the high cost of material, about \$1,500,000, with the railroad plant and everything connected with the mill. Do you think I am correct?

Mr. RAWLINS. Yes; with the mill site, stable quarters, etc.

Mr. HUMPHREYS. And the cost of bringing the water from the other side of the mountain?

Mr. RAWLINS. That would be independent.

Mr. SHINGLE. That would cost a million and a half or two million.

The CHAIRMAN. It is estimated at \$2,000,000 for 15,000 acres, which would be \$133.33 per acre.

Mr. BROOKS. Would not some of these plantations be too far from the mill?

Gov. McCARTHY. They have their own railroad system, and on some of the plantations on the coast of Hawaii they flume the cane from a higher level down to a lower level, and then flume it again to another flume. One plantation has 75 miles of flume.

The CHAIRMAN. Is that the average cost of irrigation works?

Gov. McCARTHY. No; it depends on the physical formation and conditions.

The CHAIRMAN. This land that you have just been talking about—this 15,000 acres—would cost \$2,000,000 to bring the water on to the land for irrigation, that is, \$133.33 an acre for water alone. I suppose it is worth it.

Gov. McCARTHY. That is spread over a period of 15 years.

The CHAIRMAN. That does not make any difference. It is \$133.33 an acre with interest whether you pay cash for it or pay for it in 15 years.

Gov. McCARTHY. I have not the figures with me, but I believe that in figuring up the cost of producing a crop of sugar the water—not the water in the stock but the water for irrigation—is from \$9 to \$10 a ton.

The CHAIRMAN. That may be true in some places, but here is a proposition, so far as this 15,000 acres is concerned, that some people want to reserve for the Hawaiians for homesteading. To turn that into cane land it will cost \$2,000,000, according to your statement, to bring this water onto the land, 15,000 acres. Now, in addition to that you have got to have your mill, plantation utensils, and stock, horses, mules, etc. It is possible, of course, that the 15,000 acres could be organized into an irrigation district and they might float that amount of bonds, but it would be a lien on the property of \$133.33 an acre plus 6 or 7 per cent a year until paid for. That is what you want to think about when asking for such legislation. If it can be financed it may be all right to turn it into a sugar plantation, otherwise it may be the part of wisdom to reserve it for homesteading by Hawaiians to be used for diversified agriculture.

Mr. HUMPHREYS. Here is a mill with about one-fifth of that acreage now to draw from, isn't that it?

Mr. WISE. Less than half of that.

Mr. HUMPHREYS. I do not know whether it is expected that the legislation enacted by Congress will fix the size of the homestead or not. If not, why, this question is immaterial, but Senator Wise suggested last night——

Mr. WISE. Yes; that is one of the lands that I would like to get for the Hawaiians, not for cane culture. I would prefer that they would plant taro or something else instead of sugar.

Mr. HUMPHREYS. On Molokai?

Mr. WISE. On Molokai.

Mr. HUMPHREYS. You suggested 10 acres; you thought that was sufficient?

Mr. WISE. Yes, sir; at least that.

Mr. HUMPHREYS. I understood Mr. Rawlins to say that 10 acres was not sufficient. If that is to be determined by some other authority, it is an immaterial question. But if it is proposed to put that in the legislation here I would like to get that clear. You think that 10 acres is too low?

Mr. RAWLINS. I think experience has shown on Kekaha land that a homestead of 10 acres is too small.

Gov. McCARTHY. They had only five. This limit is not less than 10 acres.

Mr. RAWLINS. Ten acres is pretty small to raise a family on.

Mr. DOWELL. Your document, that I assume you are all back of, states that "it is well recognized in the Territory of Hawaii that a 10-acre farm is not sufficiently large to enable a man to make a living thereon for himself and his family."

Mr. HUMPHREYS. It is not proposed, then, to put any limit?

Gov. McCARTHY. No; that is already provided for in the act. There is one exception, as I might say, the laborers on a certain plantation stay there and are given a small homestead of about five acres, and these men work on the plantation, and they work these little five-acre tracts. Now, when these men begin to get old they can not work on the plantation any more and the five acres is not sufficient to support themselves and their families. The ones having their own homestead, no matter how small it is, they are not permitted to draw another one.

Mr. HUMPHREYS. It is suggested that a preference in the homestead right should be given to the tenant who happens to be located on the land.

Mr. RAWLINS. Yes; the preference rights are very small areas, mostly the home sites of men of small means, who have had homes there for years, and it gives them the right to have the place so that they can get title to it.

Mr. HUMPHREYS. When a man draws his right to select, whatever the technical term may be at the drawing, A draws this lot. What is the initial payment?

Mr. RAWLINS. It all depends.

Gov. McCARTHY. Generally 10 per cent.

Mr. RAWLINS. Ten per cent of the appraised value.

Mr. HUMPHREYS. What are the lands usually appraised at?

Mr. RAWLINS. I could not say as to that.

Mr. HUMPHREYS. What would you say the Kekaha lands would be appraised at?

Gov. McCARTHY. We have had regular appraisers go out—

Mr. HUMPHREYS. Just about what would he say?

Gov. McCARTHY. The last land that we homesteaded ran from \$35 an acre to \$150 an acre in the same tract. Some was rocky and some was clear lands. It all depends.

Mr. HUMPHREYS. Now take this 3,000 acres on this lower flat on Kauai. Now there is none of that that is as cheap as \$150.

Gov. McCARTHY. That is all high-grade land.

Mr. HUMPHREYS. What would it be, about?

Gov. McCARTHY. For the 4,600 acres the plantation is offering \$5,000,000 with the water on it. But we can not get anything like that. We would get about \$500,000.

Mr. HUMPHREYS. About \$5,000,000?

Gov. McCARTHY. We will get about \$500,000. That means that we will get \$100 to \$150 an acre.

Mr. HUMPHREYS. How long do these payments run, how many years?

Mr. WISE. For 10 to 11 years. The first payment is one-tenth, and then one-fifteenth until it is paid.

Mr. HUMPHREYS. I would like to get a little further explanation about this one-fifth; why it is necessary for the mill to have one-fifth? Do the men who operate the mill when it is in operation work on the plantation, in the cane fields, when the mill is not running?

Gov. McCARTHY. Yes, sir. It all depends. Some are regular laborers.

Mr. HUMPHREYS. Laborers on what?

Gov. McCARTHY. The just ordinary rough labor.

Mr. HUMPHREYS. At the mill?

Gov. McCARTHY. At the mill.

Mr. HUMPHREYS. But the mill wants one-fifth of the land, so they will have, between seasons, as you expressed it, something for the mill hands to do, so that they will not have to turn them loose to drift away. What is it that they have to do?

Gov. McCARTHY. They work in the fields.

Mr. HUMPHREYS. And in that way you have a constant supply of labor?

Gov. McCARTHY. And work for the man all the year round.

The CHAIRMAN. I think you had better get in the record the average cost price for that land per acre.

Mr. HUMPHREYS. He says about \$100 to \$150 is what you can expect to get for the land.

Mr. IRWIN. I would say that the governor's estimate is too low.

Mr. RAWLINS. I think it is \$250 to \$300 an acre.

Gov. McCARTHY. I agree that it is worth that, but when these appraisers come in and make their appraisal, it is about that.

Mr. DOWELL. You say that these poor homesteaders have no money. How can they homestead a 10 or 20 acre tract that is worth \$200, \$300, and \$500 an acre?

Mr. WISE. There is no chance whatever.

Mr. HUMPHREYS. Except along the line suggested by Senator Wise.

Mr. DOWELL. I want to know about this plan. It is admitted here that these are not men of any special means. How can he take a homestead at an appraised value of \$250 to \$500 an acre?

Mr. RAWLINS. Well, he makes his initial payment of 10 per cent. In some instances he can borrow that from his friends. In other instances he has it himself.

Mr. DOWELL. Is not the proposition itself, the statement of it, conclusive that it is prohibitive to the fellow who has no means?

Mr. RAWLINS. Experience has taught otherwise down there. There are a good many men who have had no means who have gone in and made a success because they had friends. The majority could not.

Mr. DOWELL. If he is not somebody with friends he can not buy.

The CHAIRMAN. Can he borrow from the bank?

Mr. RAWLINS. No, sir; because he has no title. If he gets the lands, under a bill which became law, introduced by Senator Wise, he can borrow from the Government.

Mr. DOWELL. Is not that the trouble that really prohibits homesteading, because a man who wants to homestead has not the means to pay this price, the value of this land; is not that your trouble?

Mr. RAWLINS. Yes and no, because if he has got productive cane lands, and he goes in there and attends to business, he can make enough to meet his payments, to meet his initial payments if he has borrowed.

Mr. DOWELL. He takes one of these lots at a reasonable price, but is not able to make money out of it, because he has not the means that is required to handle it. Is not that the position the homesteader is up against when he undertakes to homestead these lands?

Mr. RAWLINS. Yes.

Mr. DOWELL. Why could you not adopt a system, if you want this land occupied, so that you can give it to these homesteaders at a reasonable or nominal amount and put them on the land and let them start to producing something---

The CHAIRMAN. And let them pay for it--obtain title--if they want to in 20 or 30 or 40 years?

Mr. DOWELL. Yes, and give them a chance to take the homestead. As I look at this now it looks to me as if your proposition for homesteading is prohibitive.

Mr. RAWLINS. They pay one-tenth now every year, which would make it 10 years. The officials of the Government can extend that to 20 years, they paying interest on the deferred payments, as they do now. That system came into vogue when the 1910 amendment was made to the organic act.

Mr. DOWELL. The chairman has developed this fact that there are 15,000 acres that you are seeking to have under cultivation by irrigation, which will cost nearly \$150 per acre to put that in condition to cultivate. At the end of that 15 years, if that be true, the homesteader who takes that will have to pay that price in order to get it, and instead of being homesteaded at that time by reason of the fact that the price is so high, the homesteader who has not much means can not homestead. You have to continue with another lease, and is not that the condition you are in, and will you not remain in that condition as long as this price seems to be prohibitive to the man who has not any special means?

Mr. WISE. I would like to add a little more.

The CHAIRMAN. Senator, just as soon as Mr. Rawlins gets through I will ask you to say a few words.

Mr. WISE. I just wanted to put in at this point——

Mr. RAWLINS. I was going to answer the question, but if Senator Wise wishes to he may.

Mr. WISE. While you are figuring \$250 per acre, for the initial payment, if the homesteader is going into raising sugar, you want to add \$100 at the start for fertilizer, so that he will get something like a crop of sugar cane.

Mr. DOWELL. Is it not your opinion that that is prohibitive to the man who has no means?

Mr. WISE. Yes, I think so. That is why I asked that the Molokai lands—I hope that the Hawaiians will not have anything to do with sugar cane, because it is too much for them to handle.

Mr. RAWLINS. What could they raise on the land without water?

Mr. WISE. I do not ask \$2,000,000 for water to raise sugar cane. \$300,000 would be enough. They will have enough for domestic purposes.

Mr. RAWLINS. You can not raise taro without water.

Mr. WISE. There are lots of different kinds of taro that do not need water.

Mr. HUMPHREYS. Let me ask you something about sugar. A tenant acquires the homestead to 10 or 15 acres for a family. Now what does he have to have to work that, what in the way of teams would he start out with? You have to have teams.

Mr. WISE. Are you asking me?

Mr. HUMPHREYS. Yes.

Mr. WISE. Teams surely.

Mr. HUMPHREYS. What?

Mr. WISE. At least 3 mules.

Mr. HUMPHREYS. That is \$900.

Mr. WISE. \$900?

Mr. HUMPHREYS. No; \$300 apiece.

Mr. WISE. About \$300 possibly. Then you have to have your plows.

Mr. HUMPHREYS. Now what is the system by which the tenant lives while he is making a crop? Do you have a credit system there?

Mr. WISE. You can not get any credit unless you get title to your lands. The Senate bill that I introduced in the last session and which has become a law provides that you can borrow from the Government a little money, not much. I had the bill at the start so that you could get more, but could not get it through with some of the financial men we had in the legislature, and it was cut down so that there is very little he can get. I went in with a bill for \$500,000, which was cut down by the chairman of the Finance Committee of the House from \$500,000 to \$300,000. It went in that the homesteader could borrow \$3,000, and put up for security what he had on the land, plus the rights to the land, and that was reduced down so that he could only get one-half of that. That was all he could get. If you put up a house for \$400 and you had your own money to put that up with, you could only borrow 50 per cent of that. That is all you could borrow.

Mr. RAWLINS. May I make an answer to that question?

Mr. HUMPHREYS. Yes.

Mr. RAWLINS. You asked if a man has any credit?

Mr. HUMPHREYS. The tenant.

Mr. RAWLINS. Up in Laupahoehoe on Hawaii, there are some lands that are homesteaded. The plantation advanced the lumber and the men to build the house with the understanding that when the crop is taken off they would be paid out of the crop the amount of the advance, and to my personal knowledge, in some instances, depending on the area, they were willing and did give to the tenant, the homesteader, a credit of \$16 per month in the plantation store for supplies, to be taken out at the end.

Mr. HUMPHREYS. The contract I dare say provided that this land was to be worked under the supervision and direction of the plantation.

Mr. MCCARTHY. Yes.

Mr. HUMPHREYS. I can understand how you could get credit there.

Mr. RAWLINS. Surely.

Mr. HUMPHREYS. That is the man's tenants. He has general supervision and direction over them and sees that they work it out. But I am talking now about the man who owns his homestead. There is no boss to direct him, and he has to trust to his own energy and enterprise solely. I was wondering if there was a system of credit over there for such a tenant.

The reason I asked that is that we have that in Mississippi and a great many stores there do that particular character of business. A man who owns a little farm goes to a store and buys different articles all through the year, and when his crop is gathered in the fall, he pays up. Now, if they have not that system in Hawaii, I was wondering what was going to become of the homesteader who has got enough money to make the initial payment of 10 per cent, \$300 or \$400, whatever it would be. The average fellow over there who goes on a homestead has no more cash than that, \$400 or \$500. I hope it can be worked out, but it would be a very difficult system to work out a homestead proposition for land that is worth \$250 to \$500 an acre and to provide him with \$1,200 or \$1,500 worth of implements, plus a house to live in, and the season is how long, 12 months?

Mr. WISE. Two years to get your crop matured.

Mr. IRWIN. That is done in this way, 99 cases out of 100. As soon as a homesteader gets his homestead agreement with the Government, the first thing he does is to enter into a contract with the plantation for the purchase of his cane. That contract provides that the plantation will purchase the cane and provides that the plantation will make certain advances to the homesteader, both in the nature of supplies and labor on his homestead land by the hiring to him of mules, cars, and a sufficient number of laborers to do the actual manual cultivation of the land. There is not 1 homesteader out of 100 who purchases his own farming implements. It is all done through the plantation, in 99 cases out of 100, and that contract provides the security for cultivation.

Mr. HUMPHREYS. I could understand that at Molokai, where there are the 15,000 acres. They could get along there very well because I think the initial payment would be very small.

Gov. MCCARTHY. Just now we would not calculate to homestead that unless for cane.

Mr. HUMPHREYS. I understand, but still you have to homestead it for other things.



Mr. WISE. To be a little more accurate, the Government owns only 11,000 acres of agricultural land and private parties own the other 4,000.

Mr. HUMPHREYS. On Molokai?

Mr. WISE. Yes.

Mr. HUMPHREYS. And that land is not worth much?

Mr. WISE. It is worth now only about 15 to 25 cents an acre rental.

Gov. McCARYHY. That is the rental.

Mr. HUMPHREYS. There is a very large acreage on Hawaii, whether capable of being irrigated or not I do not know, but there is a large acreage that is grazing land.

Mr. WISE. In this there are 11,000 acres that could be used for agriculture lands that would require irrigation. They would not be able to raise cane unless \$2,000,000 is expended for developing water.

Mr. HUMPHREYS. But you could raise other things.

Mr. WISE. Yes, and very well.

Mr. HUMPHREYS. There is a good market there if you could raise hay, for instance.

Mr. WISE. But they can not cure it, that is the trouble.

Mr. HUMPHREYS. You buy most of that on the coast?

Mr. WISE. Yes.

Mr. IRWIN. There are very successful corn farms there.

Mr. HUMPHREYS. I remember the corn.

The CHAIRMAN. Is that all, Mr. Humphreys?

Mr. HUMPHREYS. Yes.

Mr. DOWELL. May I ask one other question? This lease that you refer to, that is to terminate in a short time, in which one-fifth of this is asked to be retained by the planters, and the other left subject to homesteads, what is that land worth?

Mr. RAWLINS. The cane land of 4,600 acres?

Mr. DOWELL. The land you refer to in this resolution where you ask that one-fifth of it be left with the planter.

Mr. RAWLINS. As stated by the governor, the plantation is willing to pay \$5,000,000 for the Kekaha lands. As to the Waimanalo lands I do not know of any offer having been made.

Mr. DOWELL. What per acre would that be worth?

Mr. RAWLINS. I have not computed it.

Mr. HUMPHREYS. A thousand dollars—a little over.

Mr. DOWELL. Do you mean that this land would be homesteaded by the poor people of Hawaii at \$1,000 per acre?

Gov. McCARTHY. The appraisers will not put that value on it. I will give you an instance in part. In Waiakea the Government was offered \$2,000,000 for the land, but we could not sell it on account of the way that law reads, and we homesteaded it and the appraisers put a value of about \$540,000 on it. That is the way they appraise it.

The CHAIRMAN. Governor, this \$5,000,000 that you say that you could get from the plantation for the land, includes the sugar house and all of the farming implements and outhouses, in addition to the land, does it not?

Gov. McCARTHY. It includes the mill and the camp site and the camp. And when I say \$5,000,000, if we put it up at auction I believe it will bring \$7,000,000.

The CHAIRMAN. You can not put up a good mill for less than a million dollars.

Gov. McCARTHY. This already has an ancient mill, and I have been given to understand that it will cost \$750,000 to put it in an up-to-date condition. You see they get about 94 per cent extraction from their cane mill while the other mills are getting 98 per cent.

The CHAIRMAN. The million dollar estimate of mine is too low?

Gov. McCARTHY. We figure a million and a half for a new mill.

The CHAIRMAN. Then from the value of the land first of all you have to deduct a million and a half.

Gov. McCARTHY. Not necessarily, because the mill in its present condition is completely run down.

The CHAIRMAN. Then suppose you deduct \$750,000 or a million dollars. Then you have the price of the mill, and you have got machinery, you have got farming implements, the mules and horses and cattle and other necessary plantation equipment.

Gov. McCARTHY. They do not go to the Government. They are the private property of the plantation.

The CHAIRMAN. Horses and mules would be, but the houses and outhouses—

Gov. McCARTHY. They come back to the Government.

The CHAIRMAN. Well, now, a conservative estimate would be a million and a half, would it not?

Gov. McCARTHY. I believe so.

The CHAIRMAN. Then you must deduct a million and a half from the \$5,000,000 to arrive at what the real cost of the land is?

Mr. HUMPHREYS. That would be \$700 even then.

The CHAIRMAN. That would be \$3,500,000 for the land, as an outside proposition. And then of course the appraisers are not going to appraise that land at that amount of money.

Gov. McCARTHY. I might tell you a little story right here. Up in Hawaii, on the Waiakea proposition, the land went for over \$2,000,000 and yet the appraisers appraised it at \$540,000. The homesteaders hung crepe on the doors of the appraisers because they said they had appraised it too high.

Mr. DOWELL. May I ask one other question. Will it not be to the advantage of the Government to get this land into the hands of the homesteader that he may be interested in producing something, to give it to him at a nominal amount, and then permit him to produce something there to keep his family and to accumulate some property of his own. In the States the homestead land has always been put at a very nominal price.

Mr. IRWIN. It has been contributed land.

Mr. DOWELL. Yes; but this has been cultivated, and you are giving it to the homesteader who has nothing to buy it with, and you give him the opportunity with no opportunity for exercising it.

Gov. McCARTHY. I see what you are driving at, and theoretically it is all right, but our experience in homesteading has been this, that a man get Government land at a nominal price, what is considered a nominal price in Hawaii, and he goes on it, and just as soon as he has perfected his title the first thing he want to do is to sell it, and he gets the real value. Now, mind you, the Territory passes the title of the land to the man and they say that the welfare of the country depends on numerous small farmers; put the people on the land and the country is going to be successful. That is the theory. In practice these people go on these lands until they have acquired

the title, and then they sell them at their real value. Some of them have made money possibly in that land while they have been cultivating it. Others have just eked out an existence.

Mr. DOWELL. Then what becomes of the land?

Gov. McCARTHY. It goes to other people.

Mr. DOWELL. Do the planters buy it?

Gov. McCARTHY. They have not been able to buy it since the year 1910. I will give you an instance of it in Puupukea, on the island of Oahu. They gave pineapple land to the homesteaders. To-day Libby, McNeil & Libby own the land. They bought it at its real value. That was homesteaded prior to 1910. That certainly ought not to be permitted. My theory is this, that if the homestead proposition could be carried on by the bona fide owners and they could acquire the title to the land and would have to live on it, that makes for the prosperity of the Territory and I would be willing to give it to them at a nominal price. But I do not like the idea of giving it to them at a nominal price and have them acquire title and then sell it for the real value.

The CHAIRMAN. Governor, here is the proposition. We are talking away from what is before the committee, or what the committee has in its mind, I think. This land is to be homesteaded for the preservation of the Hawaiian race, for the Hawaiian people, the Hawaiian blood pure and to the 32d degree. The only reason for us to enact this legislation is to protect those people and give them an opportunity to perpetuate their race.

We have enacted legislation to protect the Indians. We have given them allotments. We do not permit him to divest himself of the title in those allotments. Under the homestead law in this country a man has got to live five years on a homestead and cultivate it. There is no reason why if a man homesteads a peice of property in Hawaii, whether 10, 20, 30, or 40 acres—the size necessary to support himself and his family—that he should not be required to live on the land, and would have no authority or title to mortgage it or sell it until we give him that authority and the title to the land. We could vest the title in the Government of Hawaii and make the homesteader a permanent tenant and vest the lease in his heirs at his death.

Gov. McCARTHY. I fully agree with you, Mr. Chairman.

The CHAIRMAN. Permitting the Hiwaiians to homestead and prove up in a few years and sell out would not rehabilitate the race nor keep them on the soil. The present leasing system you have is much better than a system that would permit them to go on the land and homestead it and prove up on it and then sell it. Your leasing system is better than that. Now, I do not know what you folks have in your minds except what I have heard Senator Wise talk about, and what I have read in the pamphlet containing the resolutions passed by your legislature and that you have filed with the committee. I wish you would come to some concrete conclusion as to what you want and try to agree on that you want.

Gov. McCARTHY. I believe that is proper.

The CHAIRMAN. The members of the committee want to hear you just as you have been going along, until every one of you gets through and then I want you to file a brief showing this committee and

Congress that we have the constitutional authority and power to enact the legislation you want. Your attorney general is here, your governor is here, Senator Wise is here, the Interior Department is here, the Solicitor for the Interior Department you can get at any time, meet with him and compile a brief showing the legislation you are asking for is constitutional; get your authorities in shape and your citations in shape.

It is not going to be the easiest thing in the world for this committee to pass the legislation you are asking for through Congress. I think that we can do it. You are before a sympathetic committee, we want to do something for the Hawaiian people, and we want to do it constitutionally, so that when we are through with it the courts will uphold what we have done, and all the questions that have been asked by Mr. Dowell, Mr. Humphreys, Mr. Johnson, and other members here are not to be considered as antagonistic but as trying to draw out the facts so that we will have the facts and Congress will have the facts before it. I am willing to go ahead every evening until we have heard you all, but I would like to have you condense your remarks as much as you can. Do not cut out any information or necessary explanation, talk as long as you ought to talk, but say what you have got to say concisely so that the committee will read it and so that the members of Congress will read it.

Mr. WISE. I would like to report that I met the Secretary of the Interior this morning, and the solicitor was handed over to me and we went over the matter, and my bill will be ready in a few days.

Mr. IRWIN. I would like to report that I have been working all day on the brief, and I think I will have it tomorrow night.

The CHAIRMAN. Would you like to address the committee at the time you file your brief?

Mr. IRWIN. That is immaterial to me. Personally, it seems to me that the other members of the committee, Mr. Rawlins and Mr. Wise, have covered these historical phases so fully and the theory upon which we are proceeding, that it seems to me that it would be a waste of time for me to go over the ground, but I would be willing to come before the committee and answer any questions.

The CHAIRMAN. I want to ask some legal questions after you have your brief filed.

Mr. IRWIN. I will be glad to answer them if I can, and go over all the ground that you think is necessary.

The CHAIRMAN. When does Mr. Shingle wish to appear?

Mr. SHINGLE. I would like to address the committee at the next hearing.

The CHAIRMAN. You do not want to address it to-night?

Mr. SHINGLE. I think I would as soon let it go over until tomorrow.

The CHAIRMAN. Mr. Lyman, have you made as much of a statement as you wish to make for the record?

Mr. LYMAN. I have previously, but I am ready to answer any questions.

Mr. DOWELL. I wish he would state for our information the real situation with reference to homesteading. I want to hear just what he has to say with reference to that.

The CHAIRMAN. Will you oblige the committee now?

**STATEMENT OF HON. HENRY J. LYMAN, MEMBER OF THE HAWAIIAN HOUSE OF REPRESENTATIVES.**

Mr. LYMAN. At home I am a farmer.

Now there have been a good many statements made this evening as to the failure of the small homesteaders in the Territory of Hawaii. But I do not think that we are all as bad as it would appear on the surface. I do not think the real reason has been given, probably because the rest of the gentlemen are not homesteaders.

Now, there has been a great deal of talk this evening about the homesteaders getting lands on the plantations, some of them making a success and others not. Now, gentlemen, the real reason is this: The plantations do not pay the homesteaders enough for the sugar cane, and I think now that the golden opportunity for the Territory of Hawaii has come, the opportunity when this tract of Government land that has been spoken of. I think that is the opportunity for you gentlemen to formulate a policy by which if one-fifth is to be leased to the plantations that first a formal contract be made by which the homesteader or small planter shall be paid sufficient for his product, for his sugar cane that he raises, and then tell the corporation that if they will accept those terms that the one-fifth of the land will be leased to them, or whatever portion it is, but not leave it as it has been up to the present time. If 25 men ask for land to be cut up into homesteads, they cut it out in the middle of a plantation. But the Government on its side has not looked out for the interests of those homesteaders and drawn up a formal contract showing how much the plantation or the mill is to pay them. To be sure, the mill makes advances, as has been brought out. Their object is to pay as little for their sugar cane as possible, so that when the homesteader gets his title he will be so disappointed, so disgusted that he is only too anxious to sell out.

The CHAIRMAN. How much do they pay for the sugar cane to the planter?

Mr. LYMAN. As a general rule, the mill gets 60 per cent and the planter 40 per cent.

The CHAIRMAN. Sixty per cent of the product?

Mr. LYMAN. Sixty per cent of the price. In other words, if sugar is \$100 a ton, the mill would get \$60 for the manufacturing and selling of that sugar and the planter \$40.

The CHAIRMAN. What is the profit per acre, how much?

Mr. LYMAN. There are two kinds of plantations—those that are known as dry lands and those that are irrigated. The dry-land plantations produce about 4 tons to the acre and the irrigated plantations 7 to 10 tons an acre.

The CHAIRMAN. And the price of sugar in ordinary times is \$100 a ton?

Mr. LYMAN. If sugar was 5 cents a pound that would be \$100.

The CHAIRMAN. That is the ordinary normal price of sugar at the mill?

Mr. LYMAN. No; the price the planter is paid depends on the price of sugar in New York. In answer to that question, the average price up to the war was 3½ and 4 cents.

The CHAIRMAN. That is true. In California we used to get 3 cents and 3½ cents for the beet sugar at the mill.

Mr. DOWELL. What should the mill pay the homesteader or farmer for his crop of cane?

Mr. LYMAN. At least 60 or 70 per cent.

The CHAIRMAN. He ought to get 70 per cent and the mill 30 per cent?

Mr. LYMAN. Something like that; yes, sir.

The CHAIRMAN. You are a practical farmer, a practical sugar man. Would that pay the mill?

Mr. LYMAN. It would pay the mill; yes; for the reason that the planter goes to all the expense and takes all the risk for the period of two years, and then has to deliver that sugar cane to the mill. The mill manufactures it, and in a period of three months that sugar is sold.

The CHAIRMAN. That is very true, but you must remember that in the meantime the mill has loaned the planter 50 or 60 per cent.

Mr. LYMAN. He has loaned the planter, and the planter pays 8 per cent a year interest.

Mr. DOWELL. On all that he borrows?

Mr. LYMAN. Yes, sir.

The CHAIRMAN. He pays 8 per cent?

Mr. LYMAN. Eight per cent. I will modify that. A few plantations charge only 6 per cent, but the general rule is 8 per cent.

The CHAIRMAN. When the planter goes in debt to the mill, he has to pay 6 or 8 per cent on the indebtedness?

Mr. LYMAN. Yes, sir.

The CHAIRMAN. In the contract is he required to sell his cane to the mill?

Mr. LYMAN. That cane is mortgaged to the mill and has to be sold to that mill.

The CHAIRMAN. At a price fixed by the mill when delivered?

Mr. LYMAN. \$1 plus all advances. It is a blank mortgage.

Mr. DOWELL. Then the price is 60 to 40 for the crop?

Mr. LYMAN. Yes, sir.

Mr. DOWELL. Is that in the contract?

Mr. LYMAN. It is in the contract.

The CHAIRMAN. And you think it ought to be 60 to the planter and 40 to the mill?

Mr. LYMAN. Yes, sir. When these recent lands were opened up contracts were made with the homesteaders at the rate of 60 to 40, paying the planter 60 per cent.

Mr. DOWELL. What lands are those?

Mr. LYMAN. The Kauai and Waiakea Government lands just opened up.

Mr. DOWELL. The ones you are referring to just reversed it?

Mr. LYMAN. Yes.

Mr. DOWELL. Suppose Congress should give authority to the Hawaiian Legislature to fix the price or to protect the farmer. Would you be able to do that by legislation?

Mr. LYMAN. By taking these Government tracts that are proposed to be opened up and fixing the contracts on those tracts, private plantations will step right and make the same terms.

The CHAIRMAN. Those mills would belong to the Government?

Mr. LYMAN. By taking those as an example and fixing it, the other plantations would step into line. Otherwise they would be short of cane.

Mr. DOWELL. You tell us how we can protect the farmer against the prices he is receiving from the mill.

Mr. LYMAN. That is something to be formulated in this bill, and my proposition would be, that whatever we decide upon——

Mr. DOWELL. You do not expect to fix the price in the law?

Mr. LYMAN. No; but the proportion, 60 to 40 per cent of the price for sugar for the month.

Mr. BROOKS. Would the corporations contract at those prices?

Mr. LYMAN. That is the point. These two tracts of Government land that are now being asked for, to lease one-fifth to the corporation, I say that now is the time for us to fix the form of contract.

The CHAIRMAN. Are you in favor of that?

Mr. LYMAN. Under those conditions; yes, sir.

Mr. DOWELL. That is, if you fix the price to the homesteader?

Mr. LYMAN. The proportion.

Mr. DOWELL. In other words, if you protect him so that he can get a fair price for his crop, then you are in favor of the proposition yourself. Otherwise you do not favor it.

Mr. LYMAN. No.

Some reference was made to a pineapple plantation, but it was not told that for two years the pineapple factories refused the product and forced the price from \$25 a ton down to \$5, yet it cost the homesteader \$15 a ton to raise those pineapples. It was natural for those who did not have enough money to get out.

Mr. DOWELL. What is the plan of the planters there, or of the mill owners? Are they trying to drive the homesteaders out of business by not paying them for their crops?

Mr. LYMAN. That has been the plan hitherto in some places.

Mr. DOWELL. Is that the purpose of it?

Mr. LYMAN. I should say so.

Mr. DOWELL. Are they succeeding in doing that?

Mr. LYMAN. They have succeeded pretty well.

Mr. MCCARTHY. That is correct.

Mr. WISE. Absolutely.

Mr. DOWELL. Then, in addition to the fact that the homesteader has a very difficult problem, if not an impossible one in paying for high-priced lands, he buys this high-priced land having in front of him all the while the fact that he can not get a fair price for the crop that he raises.

Gov. MCCARTHY. That has been the custom.

Mr. DOWELL. That naturally discourages a man from taking a homestead?

Gov. MCCARTHY. He might tell what has been done in the last two years.

Mr. LYMAN. In the case of Waiakea and other plantations, they still hold them down to the old rate.

Mr. DOWELL. Of 40-60?

Mr. LYMAN. Yes, 40-60.

Mr. IRWIN. Do you not think that the new contract is better than that?

Mr. LYMAN. You mean the one with the average?

Mr. IRWIN. Yes.

Mr. LYMAN. No, I do not for this reason. It is a contract for a group of five plantations. Some of them do not have water, and if there is a drought, the man who has a drought has a right to take the average.

The CHAIRMAN. Why should he go into the sugar-cane business on dry land? Why not something else?

Mr. LYMAN. Because, as it has been brought out, any 25 men can ask for this land to be opened up, the land is withdrawn in the heart of the plantation, and not particular lands picked out from a particular country. The lowlands along most districts where there is enough rain are all sugar-cane lands. Pineapples grow where there is less rain, not enough for sugar cane.

Mr. DOWELL. How many corporations are there operating on the island?

Mr. LYMAN. 59 or 60.

Mr. DOWELL. Are they different corporations or operated by the same men?

Mr. LYMAN. Different corporations?

Mr. DOWELL. Are they competing or are they all working as one?

Gov. MCCARTHY. Tell about the agencies.

Mr. LYMAN. They are working as one. They are under five different agencies who hold the majority of stock in the different companies.

Mr. DOWELL. Five companies own all this?

Mr. LYMAN. They work out the policy, and they get together and make a contract that is practically uniform.

Mr. SHINGLE. Would you explain that there is a large list of stockholders in some of the plantations?

Mr. LYMAN. I was not going to say anything about that, but I will. Some of the corporations have a large list of small stockholders, but at the same time the majority of the stock is held by a few men.

Mr. SHINGLE. One company has as many as 1,600 shareholders. There are several sugar companies having 500 or more stockholders.

Mr. DOWELL. The real trouble, as I understand it in Hawaii, is that the land is controlled practically by five different corporations?

Mr. LYMAN. I do not consider that the real trouble. I consider that one of the troubles. I consider that if the Government, on this land, would formulate a policy so that the homesteaders or the small planters would be paid a better price, the owners of the other plantations would fall in line and give better contracts.

Mr. DOWELL. But the fact that five companies fix the price controls the lands.

Mr. LYMAN. The private lands.

Mr. DOWELL. Yes, and not only do they own their own lands and operate them, but they practically control every foot of the other land that is operated by private persons, through the price fixing?

Mr. LYMAN. Yes.

The CHAIRMAN. The only objection to the price fixing is that it is the wrong way around.

Mr. LYMAN. Yes; it is the wrong way around, except now in the case of this last Government land opened up to homesteaders, they finally got a contract that was turned right around, by which the mill was to make a contract to pay 60 per cent.



The CHAIRMAN. Under ordinary conditions and circumstances can a planter make a living for himself and family on 10 or 20 acres with sugar averaging him  $3\frac{1}{2}$  cents at the mill?

Mr. LYMAN. Three and one-half cents?

The CHAIRMAN. Yes.

Mr. LYMAN. No, sir. Neither can the mill. Three and one-half cents is too cheap.

The CHAIRMAN. Well, it is too cheap now when sugar is 25 cents a pound, but when sugar is 9 and 10 cents a pound of course you are not going to get the same price as now.

Mr. LYMAN. That is very true.

The CHAIRMAN. Before the world war started sugar sold wholesale at 4½ cents a pound.

Mr. BROOKS. If the proportion of price should be fixed so that the raiser of cane would get enough to afford him a profit in raising cane, would not these corporations then reduce the price of sugar so that the raisers of cane would get less?

Mr. LYMAN. In answer to your question, the contract recites that they shall pay so much for cane, depending on the average price in New York. We depend on the world's market.

Mr. DOWELL. Why can not your Government lease these mills that you own to parties who are not in this combination of five who will take a reasonable price for the products of the land?

Mr. LYMAN. In answer to the question, I do not think that is the right policy at the present time, as long as the Government has lands of its own. I think that they should try it out on their own lands where the leases are expiring.

Mr. DOWELL. How? Just tell us how you are going to try it out.

Mr. LYMAN. In the case of Kekaha plantation, if it is decided that one-fifth of the land shall be leased to the corporation, the government puts that up as a part of the conditions, the proportion that the planter should receive for his cane to be ground at that mill, and that land, leased to the corporation, will be leased under those conditions. The corporation knows what it is getting, the homesteader what he is getting when he applies for the land.

The CHAIRMAN. You produce about 600,000 or 800,000 tons of sugar a year in the Territory of Hawaii?

Mr. LYMAN. About 600,000.

The CHAIRMAN. About 600,000 tons a year that comes to the California-Hawaii Sugar Refinery at Crockett, in my district in California. They sell most of it there.

Mr. LYMAN. This year for the first time. Hitherto a portion has gone to your State and the balance has been shipped to New York. But this year it all goes to California.

The CHAIRMAN. Is any sugar shipped to China or Japan?

Mr. SHINGLE. About 50,000 tons goes to the Western Sugar Refinery, located at San Francisco.

About 550,000 tons goes to the California-Hawaiian Refinery, situated at Crockett, Calif. There has never been any raw sugar shipped to either Japan or China to my knowledge.

Mr. LYMAN. All of it goes to California.

Mr. SHINGLE. It all goes to California to the two refineries I have mentioned.

Mr. LYMAN. Just this year.

The CHAIRMAN. The price that was paid for sugar this year was a pretty good price.

Mr. LYMAN. It has started out to be a pretty good price, yes; but it has only started out.

The CHAIRMAN. Now in dealing with this sugar question we have to deal not only with Hawaii, but we have to take into consideration the cane sugar of the South and the cane sugar of Cuba, and of Java, the Philippines, and other South Sea Islands, and then we have got to take into consideration the beet sugar that will be manufactured in the United States and in Europe, Germany, and France. My opinion is that after this was is over and there is a readjustment of economic conditions from a war to a peace time basis, neither the refiner nor the miller nor the grower is going to get for sugar what he is getting now.

Mr. LYMAN. I believe that.

The CHAIRMAN. And that while we are legislating to help the Hawaiian people, it would not be a good thing for you folks to induce them all to go into the raising of sugar cane, which is expensive. This year, last year, next year, and probably the year after will be very profitable for the sugar people, but the time is coming, as you have seen it in the Territory of Hawaii before, when a man can not possibly make a living for himself and his family with sugar cane on 10 or 12 acres of land, and many men who are now making money and who are riding around in automobiles can not do it after the readjustment of economic conditions. Everybody knows that. And the sugar planters and the sugar mills in Hawaii are not going to make as big profits as they have been making. Now, I agree with you that the profits of the mills are excessive; that the proportion ought to be more nearly even. Whether it ought to be 60-40 or 50-50, but I think 40-60 is too much in favor of the mill. But while you are dealing with the mill—it is human nature not to like the fellow who is making money out of you, but you have got to have a mill or the cane is no good—do not starve the mill to death or you will have no market for your cane.

Mr. DOWELL. But if the mill fixes the price and will not give the grower sufficient so that he can afford to grow it, you are going to stop production.

The CHAIRMAN. That will be up to the Government authority. It undoubtedly will not permit the mill to take an unreasonable share of the product. I never knew a business enterprise that absolutely starved to death what it was making money out of. When we frame the bill, we can fix it in such shape as to protect the planter, so far as the proportion is concerned, but not so far as the amount or value is concerned. And when you go home, if this bill is enacted that you want—this homestead law—do not, because there has been a lot of money for three or four years made in sugar, and will be for a year or two more, get all the people to go into sugar. It is a whole lot better to raise other things than for all to go into sugar, because all are not going to make money out of sugar.

Mr. LYMAN. I seem not to have made myself clear. I do not for a moment advocate that everybody should go into the sugar business, but I do not think that lands now in sugar cane should be taken out of sugar cane. But in the Territory of Hawaii we have developed the finest pineapple business of the world, and we also raise the finest coffee. We are attempting to go into diversified industries.

The CHAIRMAN. That is what you ought to do.

Mr. DOWELL. How about the pineapple industry? Is that in the same situation as the cane? Do the growers of pineapples get reasonable prices for their products?

Mr. LYMAN. They are getting very reasonable prices, because the pineapple industry is a newer industry and they have had to offer better terms to try to get some of the small planters' lands away from the sugar plantations.

Mr. BROOKS. You have to be very careful not to make that division of profits too much in favor of the planters. If you do, you will drive the refiners out of business. You have got to be careful there.

Mr. LYMAN. Mr. Congressman, I am not advocating fixing that unless it seems advisable. But I am taking the experience of this plantation, this mill of Waiakea. They must have figured out, with all their lawyers and all their financiers, that they were going to make some money on this 40 per cent that they retained, otherwise they would have closed up.

Mr. BROOKS. You mean 60 per cent?

Mr. LYMAN. No; this corporation that has this Government land now pays 60 per cent and retains 40 per cent.

Mr. DOWELL. That is a recent contract?

Mr. LYMAN. Yes.

Gov. MCCARTHY. That is a new contract.

The CHAIRMAN. It is now 11 o'clock, gentlemen. I should like to hear Mr. Shingle and the delegate to-morrow evening.

Mr. WISE. The delegate will not be able to appear.

Mr. SHINGLE. Does not the governor want to follow me?

Gov. MCCARTHY. I did not give my statement the first day. I was just covering the general situation.

The CHAIRMAN. Then I want Mr. Lane, the Secretary of the Interior, or somebody representing the Interior Department to appear before the committee.

(Thereupon, at 11 o'clock p. m., the committee adjourned until to-morrow, Thursday, February 5, at 8 o'clock p. m.)

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COMMITTEE ON TERRITORIES,  
HOUSE OF REPRESENTATIVES,  
*February 5, 1920.*

The committee met at 8 o'clock p. m., Hon. Charles F. Curry (chairman) presiding.

The CHAIRMAN. There is a quorum present. Senator Shingle will address the committee.

**STATEMENT OF HON. ROBERT W. SHINGLE, MEMBER OF THE HAWAIIAN SENATE.**

The CHAIRMAN. Proceed, Senator.

Mr. SHINGLE. I am chairman of the ways and means committee of the senate, also a member of the public lands committee. I am a member of the "Legislative Commission to Washington."

The CHAIRMAN. What is your business?

Mr. SHINGLE. I am the president of the Waterhouse Trust Co.

Mr. Chairman and gentlemen, I am not going into the details of matters. I think the members of the committee, having heard from the Governor, Senator Wise, and Representative Rawlins, have gotten the historical phase of our lands. You have heard enough of our ahapuaas, ilis, leles, and our konohikis. But I am not unmindful of the fact that this commission came to Washington to do certain things other than talk on Senator Wise's resolution.

I might state in passing that this commission is here as a result of a resolution which I introduced in the Senate on the last day of the session—a concurrent resolution—authorizing the selection of a commission by the governor to go to Washington and present these amendments. Two members of the senate and two members of the house were appointed. The governor selected senator Wise and President Charles Chillingsworth, of the senate, but President Chillingsworth was unable to come to Washington. The governor then selected me in his stead.

Now we have here what I think will develop into two bills. There will be a bill covering Senate Resolution No. 28, which asks for certain amendments to the organic act, and we will prepare a bill to meet the requirements of Senate Resolution No. 2. This is Senator Wise's plan for the rehabilitation of the Hawaiian race. There is no question in my mind but that these bills conflict. Congressman Dowell called attention to this situation at the meeting last evening. I voted for these two resolutions in the senate knowing that they were not in harmony, but I felt that it was a matter for the congressional committees to thrash out.

I think, gentlemen, that we need help from the outside as well as help from the inside. I will tell you why. I have lived in Hawaii nearly a quarter of a century. If you will recall Representative Rawlins told you last evening that in 1895 the Republic of Hawaii adopted certain land laws which were later incorporated in our organic act at the time of the annexation in 1898. These laws have stood on the statute books for these 25 years up to 1920 except for slight amendments in 1910. These land laws have always been a bone of contention during the entire time. Dissatisfaction has been expressed from time to time by different classes. Two gentlemen of this committee, Mr. Humphreys and Mr. Johnson, have been in Hawaii, and they certainly must have learned that the land laws were in dispute amongst us.

Former Gov. Frear came to Washington in 1909 and suggested some amendments. Some members of the Territories Committee inquired of him whether the Hawaiian Legislature had passed on these amendments, and he replied that they had not. The then chairman of the committee explained to the governor that he must have the legislature pass on any proposed amendments before action could be expected by Congress. Gov. Frear went back and got certain legislation through the territorial legislature, memorializing Congress to grant certain amendments, and with the assistance of the Delegate to Congress, secured congressional approval. The principal amendment was preventing corporations from buying homestead lands. I may state that while the plantation corporations are not buying homestead lands now, they are bought by individuals who are interested in these plantations and in turn are leased to the plantations. In a roundabout way the thing that the Congress sought to prevent is accomplished.

Each time our Delegate to Congress takes the stump for reelection, he finds that the land question is the chief issue. The land question is always the principal political thing to talk about in any political campaign down there. The prince has had this question in his campaigns right along. Prior to Gov. McCarthy's administration I don't believe there was a sincere desire on the part of the sugar planters to see homesteading made a success. I will say for the Delegate that he has been consistently an ardent supporter of the homesteaders, and has been sent to Congress repeatedly for 18 years largely on that plank. And I will say that Gov. McCarthy, who is of the opposite political faith of me—but the governor and I do not allow politics to interfere where the best interests of the country are involved—has made and is making an honest effort to assist the homesteaders. You perhaps recall from Congressman Lyman's remarks that, it was during the governor's administration that he had his first opportunity on the present large tract of government land, to change the cane-grinding contracts from sixty-forty to forty-sixty, so that now the planter will receive 60 per cent of the gross proceeds and the mill 40 per cent.

As I have stated before, at the last legislature I was chairman of the ways and means committee and was also a member of the public lands committee. I realized that Gov. McCarthy was not a sugar man, and that he needed the best expert in the sugar business that money could secure. This expert to be his right-hand man in helping and advising him for the benefit of the homesteaders. I inserted an item in the appropriation bill providing for the employment of a sugar expert. We had a fight in the committee on the matter. Some members wanted to make that expert's salary \$250 a month. I told my committee frankly that I would rather have them cut the item out entirely unless we could pay the sugar expert for the territory—who was to be the governor's right-hand man—as big a salary as any plantation manager received in the Islands. I was obliged to compromise on the salary. Plantation managers receive anywhere from \$5,000 to \$12,000 a year. The average salary is, perhaps, \$7,500 a year. The governor receives \$7,000, and I did not want to pay the expert more than that, so we fixed the salary at \$500 a month, or \$6,000 a year. The item passed the last legislature providing this appropriation for a sugar expert, to be appointed by the governor and act as his right-hand man in determining contracts in the interests of the homesteaders with the sugar mills and also to assist them in their farming and other problems.

Mr. DOWELL. Is the proposition of 60-40 as now arranged or as was arranged in this last contract a fair one to the farmers?

Mr. SHINGLE. I think it is. My reason for saying so is this: In the Philippine Islands we find a condition where the sugar cane is grown by the small planter. In the fields there the ox is still used to haul the cane to the mill. His cane is ground in a crude way, and he gets very little sugar out of it. Since American occupation capitalists—and I might state that considerable Hawaiian capital has gone into the Philippine Islands—have gone in there and established large mills, exactly the same class of mills that we have in Hawaii, and railroads have been built. They are called centrals in the Philippines. I assisted in floating one of these centrals, the San Carlos mill. A contract with a large number of Philippine cane growers on a basis of 50 per cent of the sugar to the mill, 50 per cent

to the planters, was entered into. Other companies were floated on the basis of 55-45, and just recently a mill was established giving the planters 60 per cent of the value of the cane, and 40 per cent to the mill. I know that Gov. McCarthy has instructed his sugar expert, Mr. Albert Horner, not to recommend any contracts for less than the 60-40 basis. The governor relies upon his attorney general, Mr. Irwin, to look after these contracts, as to form. The governor will explain that situation more in detail when he follows me.

Now, just a word about this commission coming to Washington. This is the first time in the 25 years that I have lived there that a commission has come to Washington which has the backing of the Territorial legislature. The commission, with the governor at its head, two members selected from each body of the legislature, the attorney general of the Territory, the delegate from the Territory, and the Secretary of the Interior, Franklin K. Lane, who is in direct charge of the islands, are all in harmony for the legislation we are asking.

Now, gentlemen, it may have seemed to you that we were not in full accord on resolution 2 and resolution 28. I think it will be borne out later as this committee proceeds, that we are in entire harmony. I admire Senator Wise for the splendid manner in which he presented his case to you. I must tell you a story about him. The senator was educated at Oberlin College, in Ohio, and he told me about being the champion egg eater there. He ate 35 eggs against the other fellows. Since he came to Washington he has proven himself to be the champion pie eater before this committee, for he asks for everything—asks for the whole pie.

Now, gentlemen, he does not expect that. You will set aside all the Government lands for the exclusive benefit of the Hawaiian people. The commission is entirely in sympathy with his cause. There are sufficient lands to not only provide for the rehabilitation of the native people but to also provide homesteads for the other citizens of the Territory.

Mr. IRWIN. What valuation do you place upon the Government cane lands of Waimanalo?

Mr. SHINGLE. Between \$200 and \$250 per acre.

Mr. JOHNSON. Are the lands of Waimanalo and Kehaka prospective, potential sugar-cane lands?

Mr. SHINGLE. There are two separate and distinct lands. The Waimanalo lands on the Island of Oahu back of Honolulu. The mill site on this property is located on a small piece of land in fee simple belonging to the sugar company. The cane lands I value from \$200 to \$250 per acre. Now on the Island of Kauai is the Kehaka plantation. The mill, pumps, railroads, and buildings are on land belonging to the Government. The land I believe is worth between \$500 and \$1,000 an acre. The governor has a tentative offer of \$5,000,000 from the corporation as an upset price for the land, mill site, and water rights, should it be put up at public auction. I believe that if the governor had the authority to dispose of that land he could secure more than \$5,000,000.

Mr. DOWELL. What is the rental of that land?

Mr. SHINGLE. The rental at present is \$4,000 a year. It is an old lease and embraces approximately 54,000 acres.

Mr. DOWELL. What should be the rental from the land that is worth \$1,000 an acre?

Mr. SHINGLE. It should be based on a 5 or 6 per cent interest return. The Kehaka Sugar Co. would pay at least \$250,000 on a \$5,000,000 valuation, as a yearly rental.

Mr. DOWELL. Do you think this high-priced land, this highly cultivated land, should be leased to these corporations, and the other lands homesteaded under the Wise plan?

Mr. SHINGLE. If you ask me as a business proposition, I would answer yes. But I believe it is a wise policy for the general good of the Territory to continue general homesteading. These highly cultivated lands, homesteaded under the present method, whereby the Government receives much less than their actual worth if leased to the highest bidder for a period of say from 10 to 15 years without the homestead withdrawal. A portion of the rental money—say 30 per cent of it, if you will—turned over to a revolving fund to help rehabilitate the Hawaiians along Senator Wise's plan, 70 per cent to go into the general treasury of the Territory to run the government. Appropriations could be made by the legislature from time to time out of these funds in the general treasury to lend financial assistance to general homesteading through the farm-loan act of the Territory.

At this point, I would like to talk to you briefly on the general financial conditions of the Territorial government. As chairman of the senate ways and means committee for the past four years, I have prepared the current and loan appropriation bills. It requires about \$6,000,000 to run the Territorial government. We have large problems to finance, including the health and educational departments. Leprosy and tuberculosis are costly diseases to fight. Hawaii has compulsory education and a large amount of money is needed to run the schools. Our bonded indebtedness is now \$10,694,000 with an additional \$1,500,000 authorized which will be issued soon. This will make a total bonded indebtedness of more than \$12,000,000. The interest must be secured from the general revenues.

The needs of the government are increasing constantly and if we are to engage upon a policy of financing the homesteaders and at the same time find funds to rehabilitate the Hawaiian race, ways and means must be provided to secure the revenue. I would not want to meet the situation by increased taxation. Taxes are high enough in Hawaii now. We want to keep Hawaii a pleasant place to live in. It would seem advisable to meet the situation by leasing the highly cultivated lands for the greatest amount possible.

It takes about six million dollars to run our little government for the biennial period.

The CHAIRMAN. This one plantation if leased to the present landlords would pay \$250,000 a year rental?

Mr. SHINGLE. At least that. It might be more.

The CHAIRMAN. We will put it at that. Is there any more of that character of land that you would lease, and how much? What I want to get at is this: How much rental do you expect to get from this character of land if leased instead of homesteaded?

Mr. SHINGLE. I will give you my views, but I would rather that you rely on what the governor says on that matter. I would say that the total value of the highly cultivated government lands and water rights are worth in the neighborhood of fifteen million dollars.

The CHAIRMAN. The leases on which are about to expire?

**Mr. SHINGLE.** Yes. An important point for the committee to bear in mind is this. Senator Wise and Representative Rawlins have told you about the great mahele, a division between the king, chiefs, the landlords, the common people, and so forth; also how the missionaries got some lands, and how King Kalakaua very wisely leased the crown lands for a long period. I want you to know this because it is important. Every acre of government land in the Territory of Hawaii after the 30th of June next year, whether cultivated land, arid land, waste land, or forest land, is back into the hands of the administration to deal with under the organic act. In other words, lands that have been for any period since 1910, whether to the plantations, cattle raisers, or any others, is subject to withdrawal for homesteading purposes. So, gentlemen, you have got the entire area of government land in the Territory of Hawaii to deal with in your deliberations. Am I correct in that statement, Gov. McCarthy?

**Gov. MCCARTHY.** Yes.

**Mr. SHINGLE.** After June 30, of 1921 every acre of government land is back in the hands of this Congress to deal with as it sees fit.

**The CHAIRMAN.** Do you mean to tell me that there is no private title to land in the Territory?

**Mr. SHINGLE.** I am talking about government lands.

**The CHAIRMAN.** I understood you to say every acre of land.

**Mr. SHINGLE.** I mean every acre of the public lands.

**The CHAIRMAN.** How much is that?

**Mr. SHINGLE.** I will give it right here. It is given on page 61 of the pamphlet, total government lands 1,678,460 acres. Waste and forest reserve, 1,072,890 acres; first-class pastoral, 169,130 acres; second-class pastoral, 316,980 acres, and agricultural highly cultivated, 32,660 acres, of which Waimanalo and Kekaha are part.

**The CHAIRMAN.** This 32,660 acres is the land that you would release.

**Mr. SHINGLE.** I would release along the lines of resolution 28 to the highest bidder; but, Mr. Chairman, I want to make some reservations for homesteading.

**The CHAIRMAN.** Wait a minute. You are getting mixed or I am.

**Mr. SHINGLE.** I think it is probably me.

**The CHAIRMAN.** You stated that there was one plantation there that would give \$250,000 rent a year for a re-lease of their plantation. I want to know how much more there is of that agricultural land that you lease to plantations, and what the revenue would be from that. You have got to segregate that money. You have 32,000 acres there now. How much of that 32,000 acres do you want to re-lease, and how much to hold for homesteading?

**Mr. SHINGLE.** Mr. Chairman, I want to hold some of these lands for homesteading.

**Mr. JOHNSON.** Let me ask a question right there, Mr Chairman.

**The CHAIRMAN.** All right.

**Mr. JOHNSON.** The problem that you present, that Congress is literally forced to notice is this, if I understand it; you have been operating in the Islands of Hawaii for years past on long-term leases.

**Mr. SHINGLE.** Yes, sir.

**Mr. JOHNSON.** Under which you have developed a large number of acres of highly cultivated lands?

**Mr. Shingle.** Yes, sir.



Mr. JOHNSON. The plantation system, by which the great tract is operated from a headquarters where there is a mill, a lot of portable railroads over the place, and a large number of employees operating that plant, and some homesteaders, I presume.

Mr. SHINGLE. That is correct.

Mr. JOHNSON. Some homesteaders I presume are working in that mill. Now you have come to the end of the lease. It seems to be the will of the people to let homesteaders come in as far as possible.

Mr. SHINGLE. Yes.

Mr. JOHNSON. But the probabilities are that if you make a violent change from plantation management to homesteading you are jeopardizing the income of your island, changing your basis from a lease basis to a tax basis entirely, and changing the certainty of plantation operation to the uncertainty of homestead operation. Is not that about the problem?

Mr. SHINGLE. That is correct.

Mr. JOHNSON. And you have come to Congress for the best solution possible?

Mr. SHINGLE. That is the idea.

Mr. JOHNSON. Hoping that the homesteader can get as far as we can let him go?

Mr. SHINGLE. That is the idea. You can readily see that if we are to get 600,000 tons of sugar we will get a bigger tax return than if we have only 400,000 tons.

The CHAIRMAN. You will only produce 400,000 tons of sugar if you homestead this land?

Mr. SHINGLE. I think there will be some decrease. Just how much I am not prepared to say.

The CHAIRMAN. We must know something about this money proposition. You have said that you could get \$250,000 for the rental of how many acres?

Mr. SHINGLE. Six thousand four hundred acres on the Kekeha plantation situated on the Island of Kauai.

The CHAIRMAN. How much more land of that character is there that you would lease, and what would be the rental that you would receive for it?

Mr. SHINGLE. I think that if all the sugar-cane lands were to be leased out and not homesteaded, and the Government water rights were leased out, I think the Government would receive a revenue between \$600,000 and \$700,000 per annum. The water rights will bring about \$200,000 alone.

Mr. JOHNSON. What is the income now?

Mr. SHINGLE. The income now is very small because they are all on old leases.

Mr. JOHNSON. What I wanted to lead up to was this: We admit they are apparently small because made a long time back when this whole industry was in the beginning.

Mr. SHINGLE. I should say \$50,000 is about the sum for the lands.

Mr. JOHNSON. As a matter of cold fact the probabilities are that under a new lease or a new leasing plan, and with the lease issued only after an expert estimate, the income to the treasury itself would be more from these leases than it would be under any attempt at homesteading.

Mr. SHINGLE. Absolutely.

Mr. JOHNSON. There is no doubt about that.

Mr. SHINGLE. Absolutely none at the present time.

The CHAIRMAN. Now then if you lease this highly developed land, this sugar land and pineapple land you get \$250,000 for about 6,000 acres. And it seems to me as if you would get more than \$500,000 for 33,000.

Mr. SHINGLE. Kekaha is a peculiarly situated land. It is on a hot belt and is very rich soil. It will volunteer crops for a great many years and it will produce, 6, 7, 8, 9 and 10 tons of sugar per acre. Waimanalo land, which is on the Island of Oahu, where Honolulu is located, will produce only four tons to the acre as an average.

The CHAIRMAN. Now, then, if you get only \$500,000 for the leasing of this 33,000 acres of land and divide that into two funds, 70 per cent for the general fund—

Mr. SHINGLE. And 30 per cent to be used according to Senator Wise's scheme—

The CHAIRMAN. That would be \$150,000 a year that would go into the fund to help finance homesteaders under Senator Wise's plan—

Mr. SHINGLE. To rehabilitate the Hawaiians.

The CHAIRMAN. Now we have that straight. If this land is homesteaded where is the money coming from to help the homesteaders when they go on homesteads?

Mr. SHINGLE. It would have to be appropriated out of the general funds of the treasury not otherwise appropriated and expended through the farm loan act.

The CHAIRMAN. Has the treasury resources enough to meet such a situation now?

Mr. SHINGLE. It would strain the resources of the treasury.

Mr. DOWELL. Who could homestead this high priced land?

Mr. SHINGLE. Well, of course, we have people in Hawaii who say that they can homestead it.

Mr. DOWELL. How can they be financed? I would like to have you explain that to the committee.

Mr. SHINGLE.—There is speculation under the present land laws. There is no doubt about that. If a man gets twenty acres of Kekaha land, and let us assume that the plantation will offer the Government \$1,000 an acre for the land, the Government appraisers will value it at half that sum. The homesteader is going to take 20 acres, say. That amounts to \$10,000. Right here let me say that I do not believe any appraisers that the governor will appoint will place a valuation of \$500 an acre. It will most likely be \$200 or \$250 an acre. So I am talking theoretically when I say \$500 an acre. But assuming that they have appraised it at \$500 an acre. The homesteader puts up 10 per cent or \$50 an acre. A man can come to me or any one else and possibly borrow the \$500 needed. I might be willing to help out, not that I want his land in good faith, I know that if he remains on the place and gets title some day I will get my money out of it. I can pay the additional installments. If I can rely that he is going to stay on the land, and always get my money back by either selling it to an individual or lease it myself as an investment to the plantation company if I have to take the title. So I will have an investment out of which I can get my money. But if we were to prevent that man from incumbering the land to anyone

corporation or individual alike—prevent him from encumbering his land in any shape, manner, or form, I doubt whether he could get the money.

The CHAIRMAN. Suppose he did have an opportunity to go on a piece of land of 30 or 40 acres, or even 10 acres, what is to keep him there unless we enact a law to compel him to live on the place to hold it and prohibit him from selling it?

Mr. SHINGLE. What is going to keep him there?

The CHAIRMAN. Yes. Is he going on the place as an investment to get title as soon as possible and make a clean up?

Mr. SHINGLE. I think a good many of them have done that, but I will take the case of a man that I think is sincere. He will go in and live on the land and there may come a time in his life he may want to go to the city or possibly, as he gets old, he may want to join his children who are living elsewhere, and the thing he wants is to clean up.

Mr. JOHNSON. Do you know of anything that denies the right to a man to sell his homestead in Montana, Utah, or Idaho, or any place else after he has secured title?

The CHAIRMAN. This a proposition like allotments to Indians.

Mr. SHINGLE. I might say in reply that I do not know of any place in the United States or in the world for that matter where they homestead highly cultivated sugar land worth a thousand dollars an acre.

Mr. DOWELL. Suppose that is appraised at \$200 an acre for instance. You know the value of the land and know what he has to pay, if you have the opportunity, you may be inclined to take it, and you may get possession of title to the land instead of the homesteader.

Mr. SHINGLE. Well, I would get it if he got title to it and then left it. I assumed the case of a man who had come to me and I was not conniving to get hold of his land. Take, for instance, as between you and me, you have the money, Mr. Dowell I go to you and say: "Mr. Dowell, will you give me a start so I can get a homestead?" "How much do you want?" I reply, "10 per cent, or \$500." "Are you going to stick to it?" And I say that I am. But a little later I go to you again and say, "Will you let me have another \$500." I give you a mortgage, or just a note. The time will come that I will get title, and if I can not pay you off I can deed it to you.

Mr. DOWELL. What has been the result there? Who has gotten the homesteaders land? Are the individual members of the corporation buying these titles after they are secured or are they remaining in the possession and ownership of the homesteaders?

Mr. SHINGLE. Prior to 1910, to the amendment of the organic act in 1910, they were sold directly to the plantation. Since then I have observed in the real estate records that homestead tracts have been sold to individuals.

Mr. DOWELL. Are they being used for the plantation corporation?

Mr. SHINGLE. Yes; that I know of my own knowledge.

Mr. DOWELL. A homesteader out there could not make a valid mortgage on his homestead before he perfects his title.

Mr. IRWIN. He can mortgage his interest in the homestead land, with the approval of the land commissioner and the governor.

Mr. SHINGLE. Mr. Chairman and gentlemen, I want to go on record before this committee as favoring homesteading. I might state to

you that at the last session of the legislature there was a resolution presented there by a democratic member of the senate. In that resolution he wanted to give these lands to the homesteaders for nothing. Mind you, the governor stated yesterday that the Waiakei plantation, on the Island of Hawaii, just outside the town of Hilo, could have been sold to the corporation for \$2,000,000. I believe if he had had a chance to negotiate he could have gotten \$3,000,000. That was all homesteaded save 800 acres at a valuation of \$540,000. That is all the government got out of it by selling it to the homesteaders. Now, my democratic colleague in the senate wanted to give them the land for nothing. I offered an amendment to his resolution by fixing the value at 50 per cent of its appraisal. I would have been willing that they should have the lands for nothing if I knew positively they were going to bona fide homesteaders who were to live on the land and populate the country the same as we know homesteading in the United States.

I am strongly in favor of homesteading, and I hope and pray that as a result of legislation that may be enacted or prepared by this committee the homesteaders will not be shut out in any future legislation in the islands. I want to see three things accomplished: I want to see highly cultivated lands such as the plantations of Kekaha and Waimanalo leased to the highest bidder and a portion of the money to be used for the rehabilitation of the Hawaiians and the rest of the money to go into the treasury to assist general homesteading.

I would recommend that the undeveloped lands for the Hawaiians and general homesteading be designated by the Congress; that a commission consisting, of say, the governor, and four members, two of which shall be of Hawaiian ancestry, which will manage the Hawaiian rehabilitation plan, thereby increasing their numbers; and I also want to see the balance of the undeveloped lands given to the poor people in the islands, at low valuation, and financial assistance given them, through the farm loan board.

Mr. DOWELL. The title will not go to the homesteader but he will be able to use it?

Mr. SHINGLE. I am willing to give him title to these lands if I know he will be assisted by the farm loan act. Our local farm loan act is different from yours. Your farm loan act provides for a loan on fee simple property. Our local farm loan law, which Senator Wise got through the last legislature, provides that a commission consisting of the attorney general, the treasurer and the land commissioner, shall loan to the homesteader a certain percentage before he gets the title to his land. The board has authority to loan money to the homesteader before he gets title to his land, to assist him in building his house, stock his farm, and so on.

Mr. JOHNSON. Let me ask something for my own information. This tract of land just out of Hilo was worth \$2,000,000 and possibly three, did you say?

Mr. SHINGLE. That is my judgment.

Mr. JOHNSON. And yet it was homesteaded and disposed of it the valuation of \$540,000. A statement was made a night or two ago that the property in Hawaii was assessed at full valuation.

Mr. SHINGLE. That is correct.

Mr. JOHNSON. This \$2,000,000 tract was a lease proposition?

Mr. SHINGLE. One of those old leases.

Mr. JOHNSON. What was the tax on that lease?

Mr. SHINGLE. The plantation was taxed as a whole as a going concern. The fact that it was an expiring leasehold and not fee simple would of course affect its assessed valuation.

Mr. JOHNSON. On what valuation?

Mr. SHINGLE. Governor, do you remember?

Governor McCARTHY. A million and a quarter, including the mill.

Mr. JOHNSON. So it was taxed at a million and a quarter valuation, assuming, of course, under your rate of taxation that that was the full rate of valuation.

Mr. SHINGLE. We found a number of things like this.

The CHAIRMAN. Now, in your opinion, if this tract was cut up into homesteads and the value at present shown was \$540,000, would it be taxed at that valuation?

Mr. SHINGLE. Well, I would rather let the governor answer that.

Gov. McCARTHY. I will say that this plantation, this million and a quarter of land, was not taxed.

Mr. JOHNSON. You are taxing the operation.

Gov. McCARTHY. We have a tax law there that I do not think is like anything in the United States. It is what we call an enterprise for profit. Whenever personal or real property is taken in any enterprise for profit, the tax assessor will take the physical value of the property which the enterprise owns, and if it is a corporation whose stock is for sale, they shall take the total amount of stock at the selling price as of January 1 of each year; then, as all that stock, if dumped on the market at one time, would likely be reduced in value, they deduct 10 per cent from that stock value.

There are two methods of arriving at the value. One is to take the physical value of its assets and the stock value, and another is that, it being an enterprise for profit, it has to be taken for granted it makes a profit. The board of equalization takes the average profits for five years—four years or five years—and then they capitalize that average profit at different rates per cent. For instance, we will say that a plantation owns its own land, has abundant water supply, and the land being rich, we will capitalize those profits at about 12 per cent. Say, for instance, that they own the land and they depend on rainfall for irrigation. We would capitalize that at, maybe, 15 per cent. For instance, if the plantation leases all its land and has a good water supply, we would capitalize that at a different rate. By doing this, then, we finally get these three valuations, and then it is a question of rule of thumb after that, and you simply put a valuation on it.

Mr. JOHNSON. The point I am trying to get at is this: Here is a piece of property that brought in certain taxable revenue and in addition has a rental value, and it has been homesteaded on a valuation. It must be apparent that if that was the valuation at which it was homesteaded, for some time that will be its value for taxation.

Gov. McCARTHY. According to our law the land which has been homesteaded is taxed on the fee value. Land would be taxed at \$540,000 in this instance. But in addition to that land there is a sugar mill there which owns its mill site in fee simple, 40 acres, and the mill will grind that cane, and it is an enterprise for profit, and we will tax that in addition to the \$540,000 for the land.

Mr. JOHNSON. I do not wonder that you have a homestead problem.

Gov. McCARTHY. They carry the value of the mill and the mill site at \$750,000. That particular plantation took an appeal from the assessment every year that I was chairman of the board of equalization. The Government won out in every instance. We have won out this year since we have been here. The Attorney General has a cable.

Mr. JOHNSON. Now, Governor, let us take this particular piece—you do not remember how many there were of those who wanted to lease outside of the mill section?

Gov. McCARTHY. They had about 25,000 or 30,000 acres in this plantation.

Mr. JOHNSON. How many individual lessees turned up to hold the part that the mill did not have?

Gov. McCARTHY. One hundred and eighty-three or one hundred and eighty-four homesteaders.

Mr. JOHNSON. You have 183 owning all that is not the mill property?

Mr. SHINGLE. There were 800 acres of this land that was held by the Government and not homesteaded. It adjoins the town of Hilo, and a goodly portion of it should be sold as house lots in order to benefit Hilo.

Mr. JOHNSON. That accounts for the decreased value on appraisalment?

Mr. SHINGLE. Yes.

Mr. JOHNSON. Would it not inevitably happen that these 183 persons who had homesteaded would fail to see any reason for the increase in their taxation, even on an increased valuation, so far as you can unload a tax on a going concern proposition, or whatever you call it, on the mill itself, and that will make the homestead dispute go on forever in the island?

Gov. McCARTHY. I do not quite get that.

Mr. JOHNSON. Maybe I can not make it clear.

The CHAIRMAN. Have you completed your remarks?

Mr. SHINGLE. I have just one thing more to say. I want to call the committee's attention to the fact that the people of Hawaii as represented by their legislature adopted a resolution asking that homesteading be continued. I personally am very much in favor of continuing the homesteading, with amendments which would give the governor, the land commissioner, and two-thirds of the land board, which land board consists of six members appointed by the governor and approved by and with the consent of the senate, so that you have six men out of a total of eight to pass on the qualifications of homesteaders. That was explained to Congressman Johnson last night. I am heartily in favor of Senator Wise's rehabilitation scheme in principle, and I believe that a board should be created on which there should be Hawaiian members in sympathy with the movement. I think there should be a separate bill to cover this, and with the general bill that the commission is here asking for will make two bills for the committee to consider.

I believe in leasing the highly developed lands when found in large tracts all intact, to the highest bidder, for the reason that it will give the Territory sufficient funds to create a revolving fund to assist in

the rehabilitation of the Hawaiians and, if needs be, to supplement the Farm Loan Board funds to assist general homesteading.

Mr. JOHNSON. Let me ask one question. What revenue goes from he island, the Territory of Hawaii, to the Federal Government?

Mr. SHINGLE. I am glad you brought that up, Congressman Johnson, because it gives me an opportunity to brag a little about the Territory of Hawaii. The port of Honolulu stood eleventh a year or two ago and stands fourteenth at the present moment in customs receipts turned into the United States Government. The Territory of Hawaii stands to-day the thirty-fourth in the list of all States and all Territories in the United States, in amount of internal-revenue income taxes turned into the Federal Treasury. The post-office receipts are far in excess of expenses, and the general sum total of money turned into the United States Treasury in the 20 years since annexation are far in excess of the amount that the Federal Government has had to pay. The customs receipts have aggregated \$24,827,000 and the internal revenue \$19,891,000. I have not the post-office total at hand.

Mr. JOHNSON. We hope it will stay that way.

Mr. SHINGLE. Hawaii has been a fine asset for Uncle Sam.

Mr. JOHNSON. You have no scheme by which you send proceeds to the Federal Treasury, similar to that of Alaska, and then get back an appropriation direct for road building, or anything of that kind?

Mr. SHINGLE. No.

Mr. JOHNSON. You turn in revenues in the same way that the States turn in revenues?

Mr. SHINGLE. Absolutely.

Mr. JOHNSON. Then can you see any reason why Congress frowns on the plan to put Hawaii under the terms of the Federal farm loan system?

Mr. SHINGLE. It is a question that comes up as to why Hawaii is left out of the terms of the farm loan act, the National good roads bill, educational bill, and other similar legislation. Newspapers at home are continually blaming our Delegate and saying that he is not on the job. I understand from the Delegate that it is impossible to include Hawaii.

Mr. JOHNSON. The Delegate is not to blame. I think the committee should be active there.

The CHAIRMAN. That should be part of this bill.

Mr. JOHNSON. Members of Congress generally and your committees that produce these bills assist in looking after Hawaii similar to Alaska, and they forget the fact that Alaska is 98 per cent Federally owned, and that Alaska receives directly contributions, you may say, from the Federal Government for sustenance. But in the case of Hawaii the shoe is on the other foot. Now, whenever we have made these proposition that the Territories be in on a plan that the Federal Government has offered by which they produce certain money to be met by certain money from the States, as a matter of roads, for instance, we have tried to combine some bill for Alaska and Hawaii and that is where we have missed it. Does it not occur to you, Mr. Humphreys, that if Hawaii contributes her proportion that she should be protected, for instance, by the Americanization bill if it becomes a law?

Mr. HUMPHREYS. Yes, I have always voted that way.

Mr. SHINGLE. Since the annexation, the Territory of Hawaii has turned into the Federal treasury \$44,000,000 of customs receipts and internal revenue receipts.

Mr. KALANIANA'OLE. How much does it cost the Federal Government to run the Territory of Hawaii?

Mr. SHINGLE. It is a very small amount. They pay the salary of the governor, the judiciary, and the collector of customs, postmaster, collector of internal revenue, and other Federal officials.

Mr. KALANIANA'OLE. The customhouse; how much does that cost by way of salaries?

Mr. SHINGLE. I should say all told the Federal Government expends in the neighborhood of \$100,000 a year.

Mr. KALANIANA'OLE. And it pays over to the United States Treasury \$2,000,000 or more over and above the expenses.

Mr. SHINGLE. I would like to place in the record, now that you gentlemen have given us a chance to toot our horn. I have a letter here that I prize very highly from Secretary Glass of the Treasury. It is addressed to me personally in connection with the war savings stamps campaign. In addition to having gone over the top in all the war Liberty loans—in one case we sent three-quarters of a million to help San Francisco out, we also went over the top in manpower.

When the first draft came Hawaii had no quota assigned for the reason that credit was given for volunteers and we had already overvolunteered our quota. No State on the mainland did that. Then we wrote, begging that a quota be assigned, nevertheless, and Gen. Crowder issued a very complimentary statement on our patriotism.

As regards war savings stamps, under date of July 5, 1918, Secretary Glass's letters says [reading]:

I have great pleasure in advising you that the record now shows the sale of W. S. S. in 1918, in Hawaii, \$1,720,809.96, cash. The maturity value amounts to approximately \$2,050,000. By more than \$50,000, therefore, Hawaii exceeded its quota for 1918 of \$2,000,000 maturity value, fixed by the Federal Reserve Bank of San Francisco. Of the States of the Union, only Nebraska exceeded its quota in 1918.

So the little Territory of Hawaii, away out there in the middle of the Pacific, stands side by side with Nebraska in going over the top in every one of the war activities.

The CHAIRMAN. For which we congratulate you.

Mr. JOHNSON. I feel very keenly this matter and I am inclined to say to the members of the Territorial Committee here that I expect I am somewhat to blame because I have always felt that Hawaii and Alaska go together. But now since this discussion with this commission—and I am very glad that the Territorial legislature sent you here—I can see where the two Territories of Hawaii and Alaska are not on all fours at all.

Mr. Chairman, this committee would be willing to go into that phase of its, and probably we will find a solution.

Mr. ALMON. Mr. Johnson said Alaska is 98 per cent Federal. What is the percentage in Hawaii of government-owned lands and lands owned by individuals? What is the United States Government-owned percentage of the Hawaiian Islands and that owned by individuals?

Mr. HUMPHREYS. They mean different things.



Mr. JOHNSON. Alaska is an empire not yet homesteaded. There is no way for Alaska to pay its half of these joint propositions, although they have a great output.

Mr. HUMPHREYS. I want to ask some questions about this land bill.

Mr. ALMON. About what is the acreage of individually-owned land?

Mr. SHINGLE. The total area of the Hawaiian group is about 6,000 square miles, and out of that the Government owns 1,658,000 acres of land—the Territorial government.

Mr. ALMON. What belongs to the Territory and what to individuals, what percentage?

Mr. McCLELLAN. The percentage of government-owned land—

The CHAIRMAN. I would prefer that no one inject remarks into the proceedings of the committee except members of the committee, the Members of Congress, and the legislative delegates from Hawaii. Those are the only people that have any right to inject remarks or offer any suggestions or information unless asked.

Mr. SHINGLE. I will just give the figures approximately. About 4,800,000 acres are in the Territory. That is all owned by either individuals or corporations with the exception of what is owned by the United States Government. The Territorial government has the use of about 1,678,000 acres. So I would answer your question in round figures to say that about two-thirds of all the Territory of Hawaii is owned by the individuals or corporations, or privately owned, and one-third is owned technically, I guess, by the Federal Government, but it is known to us as Territorial lands and that is the land we are talking about.

Mr. DOWELL. That is about one-third?

Mr. SHINGLE. Yes.

The CHAIRMAN. Mr. Humphreys you may proceed.

Mr. HUMPHREYS. I would like to get back to the land bill. This homestead business. How many Hawaiians do you think would want to homestead lands and go on the farm?

Mr. SHINGLE. Why I think that there would be a great number of them.

Mr. HUMPHREYS. Well, what do you mean by a great number; how many would be eligible, do you suppose, about 7,000?

Mr. SHINGLE. I would say—I am not talking about loafers now—I am talking about worthy Hawaiians. It is my judgment that it will run somewhere between—I am giving you guesswork now—I would say that it would be 1,500 or 2,000.

Mr. HUMPHREYS. One thousand five hundred or 2,000?

Mr. IRWIN. Families.

Mr. HUMPHREYS. That would be about the number of families on the islands that would want to homestead this land?

Mr. SHINGLE. That is purely guesswork, but it is my judgment that somewhere around these figures, in the course of time, could be put on the land.

Mr. HUMPHREYS. A thousand of them?

Mr. SHINGLE. Surely.

Mr. JOHNSON. Just a minute. Do Hawaiians own homesteads now?

Mr. HUMPHREYS. About 6,000; that is, they own the real estate. That does not say homesteads.

Mr. JOHNSON. That is, take from 1896 to 1919, segregated by nationalities, the Hawaiians were 1,113. They may not now hold those.

Mr. HUMPHREYS. That is not what I have in mind, though. How much land is there in the Hawaiian Islands out of these 33,000 acres of highly improved land that could be reclaimed by irrigation or otherwise so as to become suitable for homestead entries?

Mr. SHINGLE. There would be at least 43,850 acres of the agricultural irrigable land.

Mr. HUMPHREYS. That would be 43,000 acres outside of the 32,000? That would be enough, then, to give each of the 1,500 entrymen a homestead of sufficient size, in your opinion?

Mr. SHINGLE. I should think so.

Mr. HUMPHREYS. About 20 acres each?

Mr. SHINGLE. Yes.

Mr. HUMPHREYS. Now, about what is the market value of that land now?

Mr. SHINGLE. That would be very varying on the different islands. Where a certain piece of land would be worth so much on Oahu, say, it would be worth less on Molokai.

Mr. HUMPHREYS. I do not mean for you to be accurate. Much of it is worthless—25 to 50 cents an acre?

Mr. SHINGLE. I think it would be worth more than that.

Mr. WISE. I can answer those questions. I have the statistics right here from the land department.

Mr. SHINGLE. This 43,850 acres that I was talking to you about is not highly developed land. It has been selected as agricultural and irrigable land. It is not highly cultivated, but we think they could raise sweet potatoes and corn on it.

Mr. HUMPHREYS. If something was done to it?

Mr. SHINGLE. I would say that such land is worth between \$15 and \$20 an acre, some of it possibly \$25.

I know of two or three little pieces that I think you or I might pay as high as \$30 per acre. Then again there are pieces probably not worth more than \$8 or \$10.

Mr. HUMPHREYS. But over at Molokai about 15,000 acres is probably worth 25 cents?

Mr. SHINGLE. That is the rental, pastoral rental.

Mr. HUMPHREYS. That is where I got the 25 cents in my head.

Now what is your 32,000 acres worth; if you were to sell it to the highest bidder, what do you think it would be worth?

Mr. SHINGLE. The 32,000 acres of cane land?

Mr. HUMPHREYS. The 32,000 acres of cane land. What is it worth an acre?

Mr. SHINGLE. I can only make a guess for you. I would put the Kekaha land at \$5,000,000. There is how much in Waimanole?

Mr. IRWIN. Two thousand five hundred acres.

Mr. SHINGLE. I would say that the Waimanole land is worth \$500,000.

Mr. HUMPHREYS. How much is that?

Mr. SHINGLE. \$200 an acre.

Mr. HUMPHREYS. You think that is a fair price. Could you sell it for more?

Mr. SHINGLE. Possibly.

Mr. HUMPHREYS. How much could you sell it for?

Mr. SHINGLE. A going concern might pay \$750,000 for it.

Mr. HUMPHREYS. What can you sell it for if you wanted to sell it to one of these corporations?

Mr. SHINGLE. I would like to have an opportunity to sell it for \$750,000. I think I could sell it for that figure. I believe the Government could get between \$12,000,000 and \$15,000,000 for the 32,660 acres. Waimanalo has no Government-owned water. Kekaha has. These are differences which must be taken into consideration. We have not taken the time to explain.

Mr. HUMPHREYS. How much interest can you get on \$12,000,000 in the Islands?

Mr. SHINGLES. Our Territorial bonds are paying 4½ per cent.

Mr. HUMPHREYS. That would be about \$500,000 a year?

Mr. SHINGLE. That is what I suggested to the committee, about \$500,000 rental.

Mr. HUMPHREYS. Now why would it not be a sensible thing to do to lease the land for \$500,000 a year and get that \$500,000 a year and apply that to improving this forty thousand-odd acres of land that can be brought into cultivation to make it habitable for 1,500 families instead of trying to homestead land that is worth \$1,000 an acre by reducing it to \$200?

Mr. SHINGLE. From a strictly business point of view, yes.

Mr. HUMPHREYS. You take this land that is worth \$1,000 an acre, or \$5,000,000 for the land suggested—it has been suggested that the governor appoint a commission to assess it at \$200 an acre, or \$1,000,000. There are \$4,000,000 which at 5 per cent would be \$200,000 a year that you have thrown away in order that a 1,000 out of the 1,500 might homestead it. They can take that homestead if they are permitted to do it, and sell it for \$1,000 or lease it to the corporation. Now I cannot see why it would not be better for the Hawaiian people and they are the ones whose interest I have in mind, the people of Hawaii who need help, not the rich Hawaiians,—of course the rich Hawaiians do not need Government help any more than the rich of any other nationality. But it occurs to me that if you would take that and instead of homesteading it for \$1,000,000 you would lease it for \$5,000,000 and save that \$4,000,000 thereby, and let them acquire land such as the homesteaders do in this country, virgin land, you will be helping the poor man to get a home and you will be contributing very materially to the up-building of the Island and its agricultural wealth.

We have it on good authority that the gods have destroyed whole families by answering their prayers. I think that the people of Hawaii are thoroughly capable of self-government. That is the judgment I formed when I was over there. I could not see any reason why they could not manage their own affairs as well as the people in the State of Mississippi can manage theirs. That is my judgment of the population over there, the people as I saw them. They measure up to the people in this country and I would be very loath to run counter to their judgment in any matters pertaining to the local administration. But I can not get it out of my head that this would be the best thing for the poor Hawaiians.

Mr. SHINGLE. The Congressman's solution of the problem, by leasing the highly developed lands to the highest bidder, a portion of the money to go into the general revenues and a portion of the money to go into a revolving fund to rehabilitate the Hawaiians on certain tracts selected by the board and then a certain portion of the balance of the money go to augment the farm loan fund which

in turn would back up homesteaders of all classes on the undeveloped lands, instead of highly cultivated lands worth all the way from \$200 to \$1,000 an acre, would, in my opinion, be the sensible thing to do.

Mr. DOWELL. In other words, if you had this fund, you could easily finance the Hawaiian to take the lands that are not so highly developed but which can be purchased at a reasonable price, and they could make real homesteads out of them and support their families and produce corn and the other products of the islands.

Mr. SHINGLE. Exactly; and a happy condition of affairs would follow.

Mr. BROOKS. Could those lands be developed as highly as the others?

Mr. SHINGLE. They could be developed for other products than sugar. Cane comes from the lowlands up to an elevation of 500 feet, pineapples, corn, potatoes, vegetables, garden truck, etc., can be grown on the higher lands.

Mr. BROOKS. If they were developed, what would they be worth on the market?

Mr. SHINGLE. Those lands would be worth from \$50 to \$100 an acre. I was much impressed with what the chairman said that the sooner we get away, in Hawaii, from sugar as a single industry, the better off we would be at some future day when sugar prices get back to normal.

Mr. HUMPHREYS. You would have—if you take 30 per cent, which would be \$150,000—you would have about \$1,000 for each family. Well, you probably could not take care of them all at one time. Would \$3,000 buy 20 acres and build a house on it?

Mr. SHINGLE. I think \$2,500 to \$3,000 would be about the proper sum to start with.

Mr. HUMPHREYS. In two years, then; certainly in three years; in that manner you could give each of these 1,500 a little homestead and advance him some money to build his home and buy whatever was necessary for him to have; three years, at any rate.

Mr. SHINGLE. That is correct. I would like to see this board that the governor would appoint, and I would like to see the governor's appointees subject to the approval of the Territorial senate, because the people would like to know who is running the board. I should like to see the board pick out the worthy Hawaiian families, and getting them I know is Senator Wise's intention. I know that he has the right ideas to make a success of rehabilitating the Hawaiian people.

Mr. HUMPHREYS. Of course that is a matter of administration. I can not think of anything that would be more difficult than to say who is worthy and who is not. Of course we want to help people who need help. At times you find a man in Mississippi who would hardly measure up to the definition of worthy, but who has a wife and children who are thoroughly worthy.

Mr. SHINGLE. Yes; I know.

Mr. HUMPHREYS. If you were to take that fellow and give him a chance maybe he would become worthy.

Mr. SHINGLE. What I meant by that is this. I believe so strongly in the principle of Senator Wise's movement that if I had \$1,000,000 and wanted to do something worth while, I would want to give it to

the Hawaiian families to be used along the lines suggested by Senator Wise. Nothing would please me better before I pass out of this world to do just such a thing as we are talking of; I think it would be one of the finest things that I could do for a country in which I have lived so long. It appeals to me more than giving to the Belgian babies, starving, blind, or other devastated peoples of Europe. I think the success of this rehabilitation scheme is assured because there are societies known as "Puu honua," of which our Delegate is a member. Other Hawaiian societies have been working for the uplift of the Hawaiians. I know that these societies are sincerely trying to do something to help their fellow Hawaiians. I believe they know who the worthy Hawaiians are and who those are in sympathy with this movement. The governor will have no trouble in selecting his commission, because he will have the indorsement of these societies which for many years have been studying this problem and have been trying to do something. It seems now that it will be solved through Government aid. That is why I am strongly in favor of the principle of Senator Wise's scheme. I do not want to give all the lands to the Hawaiians. I want you to bear in mind that there are some other peoples living in the islands.

Mr. BROOKS. What degree of success have these societies attained?

Mr. SHINGLE. They have done well. They have what we call Hawaiian civic societies, which are equivalent to something like our commercial clubs; they meet and talk over these matters at their noon-day meal; speakers come in and talk for the benefit of the race. The Delegate has appeared before them several times. Prominent men of Honolulu and visitors to the city have been invited to appear and speak to them. They have created a great interest. The "Puu Honua" society has a large membership and its sole object is to help the Hawaiian race. When the Secretary of the Interior, Mr. Lane, arrived, the first people that he met were committees from these Hawaiian societies. The Secretary, I believe, was much impressed with the idea.

Mr. BROOKS. They have not been doing real work; only creating sentiment?

Mr. SHINGLE. Creating sentiment. They have not been able to do much else.

Mr. KALANIANA'OLE. If I may interrupt I can perhaps explain the objects and doings of the Ahahui Puu Honua Ona Hawaii (Hawaiian Protective Association), as Mr. Shingle states this association was organized some ten years ago. The main object being to rehabilitate the Hawaiian people. Naturally, as we have progressed, we have become conversant with the conditions of the Hawaiian people as they now exist, more or less, crowded into the cities and larger villages. In going into the facts which we presented, which clearly showed that the Hawaiian was a dying race, this association decided to try to work from the bottom. The Hawaiians, for generations and generations, have been an agricultural and seafaring people; naturally, they could not withstand the changed conditions which brought them into the congested districts. With the coming of the foreigner conditions gradually changed, the lands were used agriculturally in large tracts and cheap labor must be had to cultivate them successfully, and with this cheap labor came competition in the trades until the Hawaiian was crowded out and his food supply shortened and made more expensive.

The Puu Honua Society has employed nurses who have investigated this condition from a scientific standpoint and by rearrangement of diet, particularly for the young babies, they have done much to decrease the mortality rate. Amongst other things, the society found that liquor was a contributing cause for the decreasing of the Hawaiians and they passed a resolution instructing me as their president to approach Congress and see if a prohibition bill could not be enacted into law. Although I am not personally a believer in prohibition, knowing that the society was doing much good work among the Hawaiian people, I did ask Congress to enact prohibition legislation for the Territory of Hawaii. The society is doing much in assisting Hawaiians to get an education in the Normal School and College of Hawaii in Honolulu as well as contributing to educate worthy Hawaiians on the mainland. Our local department of education being short of teachers employ several from the mainland every year. As these teachers are unused to our population and conditions they do not have the success as others might have, and as a rule stay only one year.

The society is influencing young Hawaiian men and women to take up teaching as a vocation and have succeeded in adding to the teaching forces of the Territory and I believe in time the Territory will produce all the teachers needed, at least for the primary and grammar grades. During all the investigation of the various angles of living amongst the Hawaiians, the society has one thing in mind, namely, get the Hawaiian back to the soil and raise children who are attached thereto, who could have the benefit of out of door life and work and eat cheap and nourishing food, thus reestablishing the traits of character and fine physique with which their fathers were endowed. It was in the society that Mr. Wise's proposition had its inception, believing that if Congress would authorize our territorial government to use certain of the lands for the Hawaiians and give them intelligent cooperation and lend them sufficient money to start them in agricultural pursuits a long step toward rehabilitating the race would have been taken.

Mr. HUMPHREYS. Prince, if the Government would arrange to advance to these people sufficient to get homesteads, to build homes, and buy whatever was necessary to put the land in tillable condition to make the crops, such as teams, farm implements, etc., would that be sufficient aid, do you think, to induce him to go ahead?

Mr. KALANIANA'OLE. That would help to some extent. To make certain of success you must have a commission which is in entire sympathy with this movement. Working with this commission should be an agricultural expert or experts, whose duty it would be to test the soil and in other ways provide useful information for the intending homesteader. The commission should communicate this information to the applicants and insist that they conduct their work in accordance with the outline made by such expert. They should also have intelligent assistance as to marketing their products, including transportation to the principal marketing centers. In the case of those who take up stock raising, intelligent assistance and expert advice should be accorded to them.

Mr. HUMPHREYS. What other assistance do they need, Mr. Kalaniana'ole.

Mr. KALANIANA'OLE. If a settlement is decided upon on such lands as has been described on Molokai before doing so there ought, in my opinion, be a provision giving the proposed commission who would handle the settlement of the lands, power to borrow money on bonds or otherwise, so that sufficient funds would be available to pipe water from the streams on the windward side of Molokai to the lands which would be used for settlement purposes, sufficient for household and stock. I mention this believing that the suggested percentage of revenue from the leasing of other lands in the Territory would not provide, immediately, the amount necessary for developing the above-mentioned water.

Mr. HUMPHREYS. Out of their 70 per cent? -

Mr. SHINGLE. Yes; that is the idea.

Mr. HUMPHREYS. That could be administered in whatever manner the territorial legislature would direct, building roads, establishing schools, etc., so as to make country life attractive.

Mr. SHINGLE. That is right.

Mr. HUMPHREYS. But, so far as the acquisition of the homestead is concerned, that makes it possible out of this 30 per cent \$150,000 a year or \$200,000 a year, whatever it would amount to, to purchase 20 or 25 acres, whatever would be necessary, and advance money enough to build his house. I suppose building on the island is more expensive than it is here. You have to have your lumber hauled from the coast?

Mr. WISE. Every bit of it.

Mr. HUMPHREYS. So that it would cost \$1,200 or \$1,500, that would cost \$1,000 here.

Mr. WISE. It would cost that I think.

Mr. JOHNSON. Lumber is twice as high in the Hawaiian Islands as it is at Omaha.

Mr. WISE. I am a little contractor, and I have to pay \$90 a thousand for some of my rough lumber.

Mr. HUMPHREYS. It would perhaps cost you \$1,200 to build a house, and then you would have to have some team I imagine, you would want a mule.

Mr. KALANIANA'OLE. Besides these 10-acre homesteads, or whatever may be their size, they would need some pastoral lands.

Mr. HUMPHREYS. But I was speaking about the agricultural land now. If the government would grant sufficient money to enable him to buy a little farm, build his house on it, get his farming implements, what is necessary, \$2,000, \$2,500, or \$3,000, that would be all that is necessary, would it not?

Mr. KALANIANA'OLE. I think so.

Mr. HUMPHREYS. Of course building roads is another matter. Of pastoral lands of course you would require very much larger acreage, but that acreage would be cheaper.

Mr. SHINGLE. And there is much more of it.

Mr. KALANIANA'OLE. In following Mr. Wise's idea of homesteading agricultural lands and allowing each applicant from 10 to 20 acres, there should in my opinion, also be included, either by allotting a sufficient area to each applicant so that he would care for his individual herd or by providing that a large area of land should be held as a community range where each individual would be allowed to run his stock.

The lands of Molokai would be ideal for utilization as outlined in the proposal of Mr. Wise. A certain amount of cultivation and truck farming could be carried on as well as having available sizable areas for the raising of stock. It would also be ideal for the Hawaiians because it is near to the sea which would have a tendency to keep them well supplied with fish at a reasonable price.

Mr. HUMPHREYS. As far as taro is concerned they would not have to be large. He needs only a small patch for taro. A half acre would be sufficient, would it not?

Mr. KALANIANA'OLE. I think so. Whether it is a Hawaiian or anybody else they can never succeed in small farming by this I mean farming other than raising sugar, unless encouraged by the government. It has been tried and you do not find a small farming community in Hawaii to-day. There is no reason why we can not settle Hawaii with 500,000 or 600,000 of the right kind of people. We can raise the products there to supply not only the mainland when they are out of season, but also supply our own markets which we are now importing from the coast. The trouble with us is that we have all got sugar in our minds, and all we think of is sugar, and the sooner we get away from that idea and diversify our industries, the better for Hawaii and its people.

Mr. HUMPHREYS. We in Mississippi stuck to one crop, cotton, until the boll weevil came along and made it impossible in many parts of the State to grow cotton, and thereupon the people, after a year or two, went into other things, and are now more prosperous, infinitely more prosperous than they were back in the days when they raised nothing but cotton. And that will be true in your island when you can get that sugar out of their heads.

Now, you have an experiment station there——

Mr. KALANIANA'OLE. I am for sugar as far as that is concerned. I do not propose to destroy a large industry.

Mr. HUMPHREYS. But you want something else, too.

Mr. KALANIANA'OLE. Absolutely.

Mr. HUMPHREYS. Like some in this country would like to have something to put the sugar in. Now, we have got an experiment station there that has demonstrated that you can raise other things at a profit, have you not?

Mr. KALANIANA'OLE. Yes.

Mr. WISE. I would like to make a statement there. During 1849 Hawaii furnished California with Irish potatoes, oranges, hay, and wheat.

Mr. HUMPHREYS. Hay?

Mr. WISE. Yes, sir.

Mr. SHINGLE. And the California children came to Hawaii to be educated.

Mr. DOWELL. Are you raising any wheat on the island now?

Mr. WISE. No.

Mr. HUMPHREYS. I did not know that they could raise hay.

Mr. WISE. They can, but not cure it. In my home we tried for years to cure it, but can not. The humidity is too high.

Mr. BROOKS. Mr. Chairman, I would like to raise a question asked by the Prince. He suggested that a certain island be set apart for homesteading.



Mr. KALANIANA'OLE. I did not suggest a certain island. I stated an ideal place for the Hawaiians would be such a place as Molokai.

Mr. BROOKS. I was going to raise this question in regard to that, that if that were done the Hawaiians would settle there, and the balance of the Territory would be left for the orientals.

Mr. KALANIANA'OLE. I do not quite understand.

Mr. BROOKS. If a certain part of the Hawaiian Islands, one of the islands, or one part of the Territory, were to be set apart for homesteading by the Hawaiians alone or exclusively, they would settle there and populate that section, and the balance of the island would be more or less open to orientals.

Mr. KALANIANA'OLE. The public lands of Hawaii are open to homesteading by citizens, or those eligible to become citizens. Any orientals who were born in Hawaii of alien oriental parentage are eligible to take out homesteading. That is the law now.

Mr. HUMPHREYS. If they take the 15,000 acres at Molokai, it would be only 10 acres apiece for the 1,500 families.

Mr. SHINGLE. I will close, now, and make way for the governor. In case some of my fellow commissioners forget it, on behalf of the commission, we thank you and the members of the committee for your many courtesies to us. When the governor calls his special session of the legislature I am going to see if some money in the treasury, not otherwise appropriated, can not be found which can be appropriated, so we can invite the Members of Congress to come to Hawaii. Congressman Humphreys and Congressman Johnson have been there, and I hope we can get them to come again, and all the members of this committee; then you can see what our problems are at first hand. We need outside help in solving our many problems.

The CHAIRMAN. All right, Governor, you may proceed.

#### STATEMENT OF HON. CHARLES JAMES MCCARTHY, GOVERNOR OF HAWAII.

Gov. MCCARTHY. Mr. Chairman and gentlemen of the committee, I wish to state that for the last 12 years having had trouble with these land laws, in 1909 at the regular session Governor Frear proposed a concurrent resolution carrying with it certain amendments to the organic act on the land question. The legislature at that session failed to adopt the resolution, so nothing was done. At the end of the year, in November, 1909, Governor Frear seemed to have got sufficient support, and having modified his policy to a great extent was able to get through the legislature this concurrent resolution and section 73 of the organic act was amended so as to read as it does to-day. Now for 10 years we had experience with this act. We have found many places where experience has proved it requires amendment. Nearly every odd year, commencing with 1907, we have had delegations of Senators and Congressmen out to Hawaii to look over the situation so that they would get first-hand information. Now, upon their arrival at Hawaii, almost everybody that spoke to them brought up this question of public lands, and I believe that everybody who spoke to the Congressmen told an absolutely different story. The result was that when the Congressmen came away, they were befuddled as regards our land situation. At session after session of our legislature, bills and resolutions asking Congress to

amend the land laws were brought in, and sometimes they were passed in one House and defeated in the other, and the next session they would be adopted by the House that defeated them the previous session, and defeated in the House that passed them the previous session. So that everything regarding the land legislation was in a chaotic condition.

When the 1919 session met we had I think, 40 or 50 different bills, resolutions, and petitions asking for amendment of the land laws. I saw that there was no chance of getting together or of getting any relief, so I called a meeting of the House and Senate Public Lands Committees and said: "Gentlemen, I would like to have a conference with you and have you bring in every resolution, every petition, and every bill relating to the land question. Then with the Attorney General we will go over them and strike out the matters that we deem of no importance and put those that we think have merit in an omnibus resolution." That was done in Resolution No. 28, which was adopted by the legislature, after certain amendments. We present it to you in its amended form. Finally they adopted Senator Wise's concurrent resolution for the rehabilitation of the Hawaiian people.

This commission is unanimously in favor of the general bill, and also for the passage of a bill carrying out the wishes of Senator Wise. In Senator Wise's hearing he went a little bit beyond what we expected, that is we had decided that there were certain lands that should go to the Hawaiians and we were satisfied to do whatever we could to make the living on those lands of the Hawaiians successful. But as Senator Shingle has expressed it, and the commission feels the same way, we do not feel that it would be just to give all of these highly developed lands to the Hawaiians or to anybody else.

The CHAIRMAN. The Senator now says that he does not want all the highly cultivated lands.

Gov. McCARTHY. I am glad of that.

Mr. WISE. I do not think I said that we wanted the highly cultivated lands for the Hawaiians. We do not want sugar lands because it is hard to keep lands of that nature.

The CHAIRMAN. You seem to have got together a little bit to-day.

Gov. McCARTHY. I have nothing further to say except that to-day we have had a meeting, and we have decided to present a bill covering the amendment to the organic act, and the solicitor of the Department of the Interior is preparing a bill on the lines suggested by Senator Wise and carrying out his idea and those of the committee on rehabilitation of the Hawaiians.

The CHAIRMAN. Will those bills come together?

Gov. McCARTHY. No.

The CHAIRMAN. Why could not they be incorporated in one bill?

Gov. McCARTHY. It strikes us that it would be better as the other bill just amends certain sections of the organic act, and as I would like to explain the bill as printed italicized the amendments, so that any Member of Congress taking this bill and looking it over will find in the italicized portion the changes we are proposing in the amendment of the organic act. It would be wise to have that as one bill and as Senator Wise's proposition is another thing, and it would be sort of new legislation, we feel that the best way to handle it would be by a separate bill. Is that not your idea, Senator Wise?

Mr. WISE. Yes.

Gov. McCARTHY. And I believe that Senator Wise's bill should be considered by itself on its merits, as these other amendments should be considered on their merits.

The CHAIRMAN. Then you do not think that the amendment to the organic act covering the land situation in the bill that you present and the Senator's rehabilitation land bill will conflict?

Mr. McCARTHY. I do not think so.

The CHAIRMAN. If they do not conflict, why can you not put them in one bill? His is really an amendment to the organic act.

Mr. JOHNSON. That is a matter that can be considered when the bills are placed before the committee.

Mr. McCARTHY. Then your committee, if they wish to consolidate the two and add a new section to the organic act, taking in Senator Wise's bill, that is perfectly satisfactory to us.

The CHAIRMAN. That is what I want to find out.

Mr. McCARTHY. But it is the way this commission presents the matter to Congress.

The CHAIRMAN. You prefer to have the two bills presented?

Mr. McCARTHY. That is the idea.

The CHAIRMAN. But you do not object if the committee consolidates them?

Mr. McCARTHY. Not at all. That is our way of presenting the question.

I have nothing more to say. I think there has been enough said, and we have gone over the whole situation, but if any of the members of the committee wish to ask questions, I would be pleased to answer them.

Mr. WISE. I want to make a statement for a few minutes. Before the committee takes a recess, I want one impression to be left with this committee. It has been stated there is a conflict between the two resolutions. I contend that there is no conflict. If you will bear in mind what is said on top of page 52 of this pamphlet—I think I open my remarks with that. I inserted an amendment in there after my resolution had gone through. I realized after my resolution had gone through the legislature and this legislation came up for consideration in the Senate that if I did not put that amendment in, my resolution would be of no effect.

Mr. DOWELL. I raised the question, and now from the discussion that has been carried on before the committee it is very evident to me that this bill can be arranged without any conflict whatever.

Mr. WISE. Surely they can be.

To close, I want to thank the committee, and I want to emphasize one point that I came here as stated by the governor and some of the commissioners specifically to get a small piece of pie. After I got here I thought I ought to have a little more, and finally it looked to the committee and some of the commissioners as though I wanted the whole pie. I want to be corrected if I made that impression. The impression that I wanted to create was that the malele or division was not fair to the common people, and if I stated that I want all the lands, I want to state now that the division should have been fair, not that the Hawaiians should have all the lands. That would not be fair to the other nationalities that have come into the country, and that would not be fair to the government, because we shall have to use some of these moneys to run the government with.

I came with the expectation of getting a piece of this pie and it looks now as if I was going to have a fairly big piece of it, and even though it be small, I will be taking back something.

I do not claim that I have the backing of the law on my side. I do claim however, that the Hawaiians have a moral right to some of these lands, lands that should have gone to them in the division. The king, chiefs, and landlords got their share; the government got its share; but the common people up to this day have not gotten their share. It is a matter of justice that I am claiming. The king, the owner of all the lands, admitted that the common people had a vested right to one-third of all the lands and yet in the final showdown the king, chiefs, and landlords received 1,600,000 acres; the government 150,000 acres, and the common people only 28,000 acres. This claim might be late, yet I claim it is not too late. You, as judges, can render a decision to overcome this unfair division. We are asking only for a portion of the lands.

The CHAIRMAN. Mr. Irwin, are you ready with your brief?

Mr. IRWIN. I will have to ask the indulgence of the committee for another day. It is in the typewriter.

The CHAIRMAN. The hearings are closed with the exception of the filing of the briefs, the discussion of the brief and such other matters as may develop in the meantime.

Mr. DOWELL. Why can that not be submitted to the chairman?

The CHAIRMAN. I will tell one reason why. This brief will be a legal brief, dealing with the legal and constitutional authority of Congress, from their standpoint, to enact legislation that they desire. Now this is an ex parte brief, and there is no doubt of course that it will be absolutely correct and accurate. But I think that I would like to ask a few questions of the Attorney General, along the legal lines of the brief, the citations, etc. I think that Mr. Humphreys would. I think Mr. Dowell would and other members of the committee who are attorneys, and who will have to advocate this legislation on the floor. Now I think that when he submits that brief we ought to be here and discuss it.

(Thereupon, at 10.30 o'clock p. m. the committee adjourned until Saturday, February 7, at 11 o'clock a. m.)

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COMMITTEE ON TERRITORIES,  
HOUSE OF REPRESENTATIVES,  
*Saturday, February 7, 1920.*

The committee met at 11 o'clock a. m., Hon. Charles F. Curry (chairman) presiding.

The CHAIRMAN. Gentlemen of the committee, Hon. Franklin K. Lane, Secretary of the Interior, is present, and if there is no objection we will listen to the Secretary of the Interior on his idea with reference to this proposed legislation as presented by the legislative commission from Hawaii.

**STATEMENT OF HON. FRANKLIN K. LANE, SECRETARY OF  
THE INTERIOR DEPARTMENT.**

Secretary LANE. Well, I do not have any information, Mr. Chairman, as to what I was asked here to deal with. My understanding was, that you were considering a measure, or a proposed measure, regarding the taking care of the Hawaiians by providing them with homes.

The CHAIRMAN. Yes, That is the proposition before the committee.  
 Secretary LANE. That is the matter that is before you I want to give you some of my impressions gained while I was on a visit I made there a year and a half ago.

I think as a preliminary proposition you should deal with the land laws of the Hawaiian Islands with care. I understand that they have been treated on the basis of the New Zealand laws. These people in the islands and the New Zealanders are brothers in blood—the natives I refer to.

Of course, New Zealand herself has been extremely progressive in the matter of land legislation.

In approaching the land question for the Hawaiian Islands I would approach it with very fundamental respect for the legislation which has been already passed and is in effect there and would change only when changes were shown to be necessary.

I went over to the Hawaiian Islands at the time of the inauguration of Gov. McCarthy. At that time I made a speech, which if there is no objection I will present to you, Mr. Chairman, which contains some of my ideas regarding the general territorial situation and some things regarding the land question.

(The speech of Secretary Lane at the inauguration of Gov. Charles J. McCarthy, of Hawaii, June 22, 1918, is printed in the record in full as follows:)

SPEECH OF SECRETARY LANE AT INAUGURATION OF GOV. CHARLES J. M'CARTHY, OF HAWAII, JUNE 22, 1918.

I am here as the representative of the President of the United States to do honor to your outgoing governor, who has served you with such exceptional faithfulness, and to the incoming governor whose appointment has received such approval at your hands as to be a promise of a high loyalty to your interests and to those of the Nation. May this Territory always have men of equal unselfishness as its public officials. Presuming upon this opportunity I beg to present to you some considerations and suggestions regarding the future of the Territory of Hawaii.

No one can have gained even a superficial knowledge of these islands without being startled by their surprising resources as well as by the complexity of the problems here presented. Allowing sufficient latitude for the figure of speech it may be said that this Territory is a microcosm, a miniature world, a tiny slice from near the Equator to the Arctic Circle. Passing upward from the rice marshes of the coast to the snow-crowned mountains one can look as on a moving picture at the procession of the world's flowers, fruits, and foods. Here, if anywhere, man's physical needs may be supplied without reliance upon outside aid. Hawaii should, therefore, be no drain upon the mainland or upon the world during this war. It must be an exporter, not an importer, a self-dependent, and a helper. It has been with pride that I have seen how thoroughly this people have recognized this duty and how fully they have met this as well as all other patriotic calls that have been made upon them.

In lines of industry, other than the furnishing of food and food products, this Territory may not reasonably expect to have distinction

because of its lack of minerals. Modern industrialism is founded upon iron, and the heat to smelt that iron, which may come from coal or gas or water power. In all of these this island is short to the point of destitution. Therefore, a life of your own has manifestly been intended for you by nature and herein lies the challenge to your ingenuity, your adaptability, your energy—in a word, your genius. How much can be made out of this land and how can its life be most rapidly and most surely brought into conformity with the ideals of the great Commonwealth of which you are so rare a part? To answer this question let us give regard to your most manifest resources.

The scenery of these islands will become more and more of an asset as the world grows in its love for the grand and beautiful in nature. The sea, the slope, and the mountains—these no policy of man nor of government can take from you. The one thing which man is called upon to do is to reveal them to the world—to let mankind know how much of the sublime, the lovely, and the awful there is to be seen here, and to make them seeable by building good roads, good hotels, securing safe harbors, and abundant ships.

It is a true test of a nation to ask what kind of roads it has. Roads mean communication, interrelationships of all kinds. Isolation is the supreme enemy of civilization. St. Paul said that it was not good that man should live alone. He was speaking, perhaps egotistically, of woman's place in the world, but his saying has a meaning infinitely broader than that ordinarily given to it. The interdependence of the peoples marks distinctively that mysterious process of climbing from savagery to civilization which we call the rise of man. "The man we do not like is the man we do not know," said a French philosopher. Our catholicism, our width of view, length of vision, our understanding of our fellows, and our sympathy with them in all the perplexities that harass men of every race comes with knowledge, and this with relationship. To gain this knowledge, not less than to widen markets, to develop new industries, and to unify ourselves, the first thing needed is the road, the highway. The United States west of the Alleghenies would still be an undeveloped land but for the pushing of the wagon road and the railroad from east to west. There would be no American Nation but for these. They are the ties that bind. And how impressively true and applicable this thought is where nature has so much to show if we can but gain access to her secrets—as on these islands. Landscape, natural wonders, no matter how exceptional, without good roads are but local assets and of slight value, for they become available only to the very few—those rare individuals, whose fortitude, fortune, and time will permit of making the adventure into remote places. But scenery with good roads turn mountains, volcanoes, great gardens of native plants, broad sweeps of many-colored seas, and all the myriad attractions which these islands possess into an asset which is beyond appraisal, and will be always. Ships will come to the Pacific and in abundance when the war is over. These will tie you more tightly, I trust, to the mainland and give you quicker connection with the rest of the world. Harbors, better harbors, you should have. And these with roads—broad boulevards on the main routes and small penetrating feeders everywhere—will consolidate our people, bring a more healthful, social, and economic life to all, and draw the world to see what you have to give.

I can not dismiss this matter of roads without one word of warning. Roads unmaintained are worse than no roads at all because they indicate an effort that has failed. One dollar expended for a road may be regarded as a ten dollar asset, provided it is built honestly and solidly. This is true, however, only if there is ten cents added every year to keep that road in condition. Caesar and Napoleon gained fame by the building of roads because they built wisely, daringly and solidly. But the highways of Italy, Switzerland, and France are to-day not to be credited to them, but to those who, coming later, proved their appreciation of the genius of these pioneers by preserving, improving and unceasingly maintaining the roads which Caesar and Napoleon built.

Congress has taken an increasing interest in these later years in the preservation to the people of the places of beauty and grandeur. And two years ago extended this policy to the Hawaiian Islands by the creation of a national park, partly upon the island of Hawaii and partly on the island of Maui. To this park it gave whatever public land it had control over. That feature in this park which is of crowning interest, and I may safely say, I think, that it is the most suggestive of all natural wonders, because it illustrates one method of the world's making, is the volcano of Kilauea. Through the middle of its lake of lava runs the Bishop estate line, and for purposes of properly policing this park and more surely reserving it for the public, I have taken up with the trustees of this estate the matter of securing a transfer to the Government of all the lands which they own in and around this crater. The suggestion made by us has met with prompt and very agreeable response. The estate feels itself unwarranted in transferring the property without consideration, because all of its property is held in trust for eleemosynary purposes, but the trustees will consent to the transfer in exchange for other property of equal value out of the territorial public lands. Warrant should be had for this from the Federal Government and the Territory, and with honest appraisers there should be little difficulty in securing the full title to all the lands within the park boundaries. I am sure that the Federal Government will cooperate with the Territory in putting beyond all question the future of this park.

Not the least of your resources is your climate. When Kipling wrote his poem on the old "Three decker," which "carried tired people to the islands of the blest," he unquestionably had these islands in his mind. Climate is an asset. Southern California, when I first knew it, was a desert with an occasional oasis and a healing, happy climate. Man's enterprise has turned this desert into one great garden, its oasis into cities. The basis of Southern California growth was, however, the climate. This was the seed from which all else grew. "Why live where snows and storms perpetually harass and attack this frail human machine, when there is a land of sunny skies and gentle atmosphere?" This was the call sent out to the world by those bold men who first foresaw and that not so many years ago—the Southern California of to-day.

A climate that breaks down the human fiber, either in the physical body or the character, is not one to seek. The world of science, however, has not yet been put to the full proof of what it can do to rid its less healthful places of those pests which make men lazy, and destroying energy, making civilization impossible. You have, how-

ever, a climate that is so varied within a range of a few miles that man can find whatever grade of heat or moisture his lungs, his heart, or his spirit may require. Where men rise at 4 o'clock in the morning the whole year round and work until 6 at night, and yet raise three crops of corn every two years, there is no danger of the climate being too soft for the most strenuous life. The boys playing baseball, the children in the schools, alert and intelligent; these are the best proofs possible that beside this soothing sea men and women can be raised fit for the fight of life.

When the old kings gave of their lands to their chiefs they ran the property lines from the sea to the mountain top. This was their easiest and perhaps their only way of dividing the lands. It has, however, a peculiar suggestion for us. Those who live in lower altitudes need the change in the air that comes with the ascent to the mountains, and I am in hope that out of your public lands, and out of the generosity of those who have so much and have given so much toward public purposes in this territory there will be reserved on every island mountain a public park, where those may resort who come from the lands below, where the transient may pass the night, or those who wish may have their cottages, which should be held under license which will prevent the park from becoming absorbed into private ownership. As the man of wealth now wisely has his hill house and his seaside house, so should there be reserved for those of more modest means some opportunity to gain the advantages of the rarer, cooler air of higher altitudes. This, however, should not be attempted at haphazard, but under plans carefully thought out, and under a management and control that will be wise, independent, and public spirited.

Scenery and climate have played their part in the making of this Territory, and will play a still greater part in the future, but these will not suffice if we are to have here that character of civilization which is consonant with the ideals of a democracy. When the President said in his now famous message to Congress that "the world was to be made safe for democracy," he meant, I believe, much more than that a certain form of political institution was to have a chance for its life. For democracy means more than a certain form of selecting officials. It is a philosophy under which men develop a ripeness of mind, a breadth of sympathy, and a sense of cooperation which lead to the fullest development of the human being. A nation may be rich, and it may be powerful, and it may produce exceptional men who do great things in war, or in the arts, and contribute much to the world's betterment without necessarily being controlled by a system of laws which makes the best use possible of the human material that is the foundation of a nation. And that form of government which we call a "democracy," a government of the people, for the people, and by the people, we hold to be the most perfect invention yet produced by which can be expressed the imperative demand of man's nature that he shall control his own destiny. For this we are fighting in France. For this we shall continue to fight against the arrogant and dominating spirit of a feudal militarism. The free peoples of the whole world are banded together to secure for democracy—the youngest born of all forms of government—the right to live and grow, for we believe that under it the individual will most surely grow. In a democracy men must have the right to achieve, if



they can. Such a government does not assure success of any kind to any man. It does not guarantee a living, nor is it hostile to wealth, nor is it opposed to those distinctions which arise out of the differences between men. But it is hostile, inherently hostile, to the perpetuation of any system, economic, social, or political, which gives to a class privileges and advantages which set it apart and make it a world by itself into which no man can win his way no matter what his endowments or achievements.

I am moved to this excursion into the theory of our Government by the belief that if this territory is to be and continue an integral part of our Nation, it must live in the constant thought that men are woven into the Nation's fabric by being identified physically, morally, spiritually and industrially with its life. And this draws us into the question of the way by which this may be effected here.

The most troublesome and perhaps the most fundamental of all questions is to know how the lands of a country should be used. I speak of this as a fundamental problem because in a large part I believe the character of a country's civilization depends upon the distribution of its wealth; and land, plus labor, plus brains, plus character, accounts for the wealth of a country. The greatest of your physical resources is, of course, your land. A long time ago most of it passed into private hands. It never did in fact belong to the people. And the visitor to this land can not but be filled with the deepest admiration for the manner in which from the early days of the last century the lands of these islands have been developed. The civil engineer, the hydraulic engineer, the mechanical engineer, the chemist, have been called in to convert cactus-covered mountain sides into richly yielding sugar plantations; to fight the enemies within the soil and the multitudinous enemies of the plant itself, the world has been searched for methods of self-protection. The modern arts of plowing, fertilizing, cultivating, gathering, handling, shipping, and marketing have nowhere been more intensively developed than as applied to the raising of the sugar on these islands.

If the problem were no larger than the securing of the maximum crop from these lands it might well be doubted whether any great good would come from a further division of land holdings into many hands. But the problem is a much greater one than the relative output under two systems of holdings. And this has been recognized by Congress, so that there is no alternative but to pursue the policy which Congress has designated, unless we wish to appeal from its judgment, and this appeal I frankly do not feel inclined to advise.

For 50 years, first under the Presidency of Abraham Lincoln, it has been the policy of the United States that, where practicable, its public lands shall be divided into homesteads. It did not intend that its lands should go into the hands of speculators, nor did it intend that these lands should go unused as homes and as producing properties. But where there was so great an abundance of land, and where administration was easy because of the insidious thought that the wise thing was to get lands out of public ownership as soon as possible, the homestead laws were violated, so that they came almost into entire disrepute. This Territory has had its experience of a similar character. Lands have been taken as homesteads merely for the purpose of a quick transfer and the gaining of a little money easily at the expense of the public.

There has been a difference of opinion, much of it an honest difference, as to the possibility of applying the homestead law to sugar lands, but that experiment must be made. I have seen instances where it has already proved successful. The determining factor in its success is the character of the people who take the homesteads, their purpose and their ability to work together. This part of our common country should give an opportunity to the man of capacity and energy to secure a home for himself, a home off which he can earn his own living, a home in which he can raise his own family, a home in which self-respect will be developed, out of which can come sound judgments as to the welfare of the nation. A people with spirit and independent judgment, laws that are just and wisely administered, lands as widely distributed as is compatible with their highest use—these are essentials in our scheme of national life. And whatever opportunity remains with the limited amount of public land that you have should be availed of to make the experiment which the law requires.

It does not follow, of course, that under your laws, this Territory is to be compelled to a spendthrift policy. You can make contracts for the disposal of these lands by which the purpose of the law will be observed, and that purpose, it must never be forgotten, is to put a man upon the land who will make that land his home, who will work that land as far as possible himself, and who by reason of his holding, will become a part of the community. This means that intense cultivation may be required; that a long period of residence may be required, and it is expressly required that the Territory shall receive for those lands their reasonable market value. This latter requirement makes necessary the wisest nonpolitical appraisal. There should be no more political favoritism in enforcing the land laws through administrative officials than there is in enforcing the criminal and other laws through the courts. Good administration requires honest appraisal of the land to be disposed of, conditions in the contract that make for a compliance with the spirit and purpose of the law, and a rigid loyalty to the enforcement of those conditions. With these, I believe that it is possible to maintain the sugar output of this Territory, where sugar is the crop that will bring the largest body of permanent value to the country.

That asset in which democracy, so far evolved, is most lacking, is the application of definite, continuous, informed thought to the social and economic questions which affect the nation. A private individual, or a corporation having a competent management, has such concern in its own affairs that it analyzes, studies, gathers facts, and outlines policies continuously with respect to its own fortunes. Machinery of this kind must be devised in dealing with our national questions. I have been met by the statement that the homesteader would be powerless because of his inability to compete with the more elaborately and scientifically devised management of the great corporation. That the mill was the crucial factor in determining the success or failure of a plantation or that the plantation railroad or the other machinery upon the plantation was its making or unmaking. I can well believe this to be true, but it does not follow, to my mind, that because a thing has been done only by a corporation exercising the relation of employer and employee that it is not possible to so organize a group of men, their energies, and their capital

as to bring about the same result. The movement of our time is along lines of cooperative effort, and the most difficult of all problems, let it be frankly understood, is to bring men into cooperation. But with time it must be possible that a nation that has otherwise organized itself so perfectly can produce the machinery by which individual effort will be organized and concentrated to effect a certain definite end.

The United States has conducted, through the Interior Department, for some years a Reclamation Service, the purpose of which is to reclaim from a desert condition. Government and private lands, bring in water upon them, sometimes first storing that water in the mountains before it can be brought down by canal and ditch to the land itself. The men who go upon these lands are homesteaders. The control of the water, until payment is made therefor, is left in the hands of the Government, which keeps upon each project a manager. The individual farms, however, are not under his control, but the farmers on these projects have united in the formation of water users' associations which deal directly with the Government in the matter of payments and in the matter of policies. I have found it practicable to give over two of the largest projects entirely to the control of these water users' associations. They employ competent engineers and project managers and are self-ruling. Now, it takes men of experience to realize the value of such cooperation. The ultraindividualist can not see this. He will not conform. He refuses to accept the judgment of his fellows. He will not accept leadership until driven to it by extreme necessity. I can foresee that in homesteading these lands, assuming that men who are honest in their purpose to make them their homes go upon the lands, the most difficult of problems will be to bring these men together and focus them as an industrial unit, and by contributing to a common fund and organizing with wisdom do themselves what the plantation management has done hitherto. But this is a possibility and it requires a study of the problem to find a way by which a mill can be owned and operated by a colony, a common railroad can be owned and operated by a colony, and the marketing done by the colony.

Under your laws it does not seem practicable to make selection as to the individuals who are to take the lands. There is no qualifying test preliminary to allotment. The test of a man's qualification to handle land is made as an experiment after the man takes up his homestead. It is difficult to see how this can be avoided without doing greater injury than good. But an education can be given to the homesteader that will make the experiment less hazardous to the Territory.

There can be no question but that in following the law a risk is run, and particularly is that true at this time when the country so gravely needs whatever food products these islands can produce. Unless the law is to be disregarded that risk must be taken, and if it is not taken now, when will the day of safety certainly come? No one can answer that question. As to those lands which are now subject to homesteading, and those which soon will be by the expiration of their leases, a policy has been devised which will make sure that these lands do not fall into idleness. This policy is based primarily upon the desire of the mill owners, their patriotic desire,

as well as their selfish desire, that the lands upon which their mills are dependent be cultivated. It would be a crime, an unforgivable crime, to allow lands that can be used and are in crop to go uncultivated during the war. Homesteads must be made with such conditions as will enforce the meeting of this national necessity, and these who would have the temerity to put in jeopardy the realization of the largest possible output, whether mill owners or homesteaders, could not but be regarded as other than enemies of the public welfare.

I understand that it is the new administration' program to open the public lands gradually, and only after proper classification. It can then be discovered before long whether there are defects in the law which can be remedied by the enactment of new statutes. The Government is to give an opportunity to those who have been clamoring for a long time for such an opportunity, but the opportunity that is to be given is necessarily coupled with the most serious duty, and it may well be said that the future of homesteading in this Territory depends upon the experiment which is now to be made. A man who holds a mill is under an implied obligation to the community, even though his mill is not now regarded as a public utility. And the man who holds land is under a similar obligation.

We are thinking in these days, not of ourselves as units, having each a desire for prosperity. We are thinking of that larger body constituting the Nation, and of the still larger body composed of those nations that are our allies in this. Men by the million are making the supreme sacrifice by giving their lives to a cause in which they believe and which is identical with our interest; and we have no interest but the dignity, the self-respect and the perpetuation of our Nation. national resources, Territorial resources, individual resources—all are laid upon the altar of civilization. We can not be happy, nor can we realize our own ideal of ourselves unless we are willing to offer all. With this sentiment in our hearts, this high resolve to do the noblest part that is possible, we may be sure that the little things will find quick resolution.

Scenery and climate and lands alone do not, however, constitute the Hawaiian Islands. The men, women and children who live upon these lands and enjoy this climate and scenery—these are the greatest of all its resources, as they are the greatest of any nation's resources. No better promise of national unity and strength can be given than that which I have seen in my study of your public schools, where children of many races, born on these islands, unite in repeating each day a common national creed with deep fervor and with a real understanding, I believe. To make of these young ones a consolidated purposeful mass, having a common love for one country, is not an easy task. But an effort that is distinguished for its good sense and earnestness is being made, and that with a rare fidelity.

Your strategic situation in the middle of the Pacific is in itself a National and a Territorial resource. This land is the first stepping stone from America to Asia and Australia, a jeweled link, in the chain from the New World to the Old. As this land was given its standards and its religion and its insight into a new civilization by the missionaries who came from the mainland, so now it can be said that this land itself is a missionary, spreading the gospel of a better day from the Occident to the Orient. That old continent to the westward where

man was born and where civilized life first began already gives evidence that it has caught the spirit and the purpose of the things which we call a Christian civilization, a life in which the rights of others and sympathy for others are matters of first concern. The example of these islands, the justice which men find here, the liberty which the men gain here, who come with a purpose to make themselves of us—these are things of ultimately greater moment in their reactions upon other peoples than the use we make of the resources with which these islands have been endowed.

If this war proves that men can die, not for their leaders and chieftains and kings, not in the hope of gain, nor for a desire of distinction, but out of love for the right of man to be his own master, the war will make one of the noblest chapters in history. If when it ends, as is our confident hope, men for many years may live in security and in happiness in these islands of the sea and on the mainland, and mankind will have discovered the futility of seeking to make power the one standard of national life, it will be the most noble page of history. And in the outcome of this war no part of the world has more to gain or more to lose than the islands on which you live.

In another year it will be 20 years since these islands came under the Stars and Stripes. There is no question of your loyalty to this new flag now. And 20 years hence I trust you will find yourselves still happier and more in love with that flag, because of the wisdom and the noble purpose of that President who has given to you your new governor and whose prime and only concern is the welfare of our nation and of mankind.

Secretary LANE. One thing that impressed me there was the fact that the natives of the islands, who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty. They never owned the land of the islands. The land was owned by the king originally, and they had in 1848 what they called a *mahele*, in which there was a division. As a result of that and legislation that passed subsequently, we have approximately 1,600,000 acres of public lands in the islands. Most of that land is not suitable for making homes. Large bodies of it is lava land or grazing land. Some of it is the very finest quality of land, perhaps 120,000 acres, approximately.

Nobody knows just what the population, the Hawaiian population, was 100 years ago when the missionaries came. Perhaps it was as much as 200,000, probably less. At any rate, now the population is approximately 40,000 of those who have full Hawaiian blood or part Hawaiian blood. In my judgment, from the limited knowledge I have of the history of the islands, those people, the natives, were not treated fairly in the division of the lands that was made in 1848. At any rate, they are a problem now and they ought to be cared for by being provided with homes out of the public lands; but homes that they could not mortgage and could not sell. They are a most lovable people, a kindly people, and a generous people. They have arts of their own which endear them to the people who visit the islands. It is not altogether the beauty of the islands that attracts people there. It is the spirit that they see and the old civilization that they meet. There is a thriftlessness among those people that is characteristic among peoples that are raised under a communist or feudal system. They do not know what the competitive system is and they will get

rid of property that is given them. They do not look forward. They can not see to-morrow. Therefore, they should be given as close identification with their country as is possible and yet be protected against their own thriftlessness and against the predatory nature of those who wish to take the land from them, and who have in the past. So that I thought then, and I still think, that one of the wisest things we can do with some of those public lands is to have a general survey of the islands made by some competent board. I myself would think it wise that the Secretary of the Interior should name the board, because there is an immense lot of partisanship there.

The CHAIRMAN. Should it be appointed from among the inhabitants of the island?

Secretary LANE. I have no doubt but that some of the members of the commission should be from the islands. I should say that if you took one first-class man out of the Department of the Interior and two men from the islands, perhaps one a native and one not, that you would have the proper kind of commission. However, that is a matter of detail as to which I very gladly defer to your own judgment.

The CHAIRMAN. I am very glad to get your opinion on this subject.

Secretary LANE. The commission should see all of the land that we still own there and then call upon the Land Commission which is in existence there now to relinquish those lands to what I would call the Hawaiian Homes Commission--another intelligent body made up, I have suggested, of the governor, the land commissioner, and three civilians, two of whom should be Hawaiians, and that this commission, the Hawaiian Homes Commission, should act in loco parentis for these people in the laying out of these lands, organize them into communities, and administer them generally. That is the power I would grant to them.

A small amount only is necessary--10 acres, 20 acres, or 30 acres, depending upon the kind of soil; perhaps more in some cases. And those people could be given an opportunity to go on those lands and take them, paying a rental, having the lands so long as they used them. The rental should be nominal--merely a dollar a year--but they should understand that those lands are given to them by the Government out of its desire to see them cared for and have a home, with the understanding that they were to be used as homes and not as a basis for speculation.

The one difficulty that we have found in the application of the homestead laws in the islands is the fact that those laws are susceptible of being made to serve speculative purposes, just as some of our own were in the old days--some of our homestead laws of this country.

There should be power in that same body, or in some other body, to advance a sufficient amount of money for improving the land and for a limited amount of stock, for the putting up of a cottage. That sum should be reimbursable. These gentlemen who are familiar with the islands situation can tell you better as to the chances of getting that money back than I can. It is idle to give these people the bare land. You have got to give them some money with which to improve the land and to develop a home on it. The best way to do that, in my judgment, would be to have this homes commission do the breaking of the land where that was necessary: the clearing of the land where that was necessary, and perhaps the putting up of the houses. At any rate, it should act as the most careful

banker should act in the lending out of this money, so that it could be reasonably sure that the money would come back.

It is an impossible thing to make a distinction between men who should have such places in advance. You can not take a group of men and say "You are fitted to handle this little plantation of your own, and you are not." You have got to put them all to the test and see which one makes good and which one does not; and the power should be left to take these homes away whenever they are not used for a period of two years, say, or whenever the leasing fee of a dollar a year was not paid.

The islands are going to be—I am dealing now with a very materialistic side of this proposition—they are going to be more and more popular as a place of resort. We have no similar beauties within the mainland of the United States. And one of the most agreeable features of the islands will be the natives themselves and their native life.

The project that you are undertaking and that you are considering should not be done in the nature of largesse or as a grant to these people. It should be done as a matter of justice—belated justice; and I think you will find those people extremely appreciative of it. They went into the Army. They all speak English. They have had the compulsory school system there for over half of a century. They are thoroughly good Americans. They are loyal to the Government of the United States in every way. They can be relied upon in time of trouble, and I do not know of any body of men with whom I would rather trust myself or trust property interests with than them; and they are a small minority in the country.

I think that is all I have to say, Mr. Chairman.

MR. DOWELL. May I interrupt you here? It has been shown by the testimony here that there is a great difference in the character of the land.

Secretary LANE. A great difference in what?

MR. DOWELL. In the character of the land that is owned by the Government. I wish you would explain to the committee, if you will, briefly, the kind of land you would suggest should be turned over under this plan which is offered: the high-priced land or the other land, the land that must be reclaimed. What would be your position with reference to that?

Secretary LANE. Well, I am not sufficiently familiar with all of the lands that are available; but I should say that one of the things that ought to be taken into consideration would be the location of the lands and their nearness to settled communities. These people in a very large part are of the working class. They naturally wish to live together, and they wish to be near towns or cities of their own. They are not a people who love isolation. They desire to get together and I would not say that it was advisable in giving them homes to take the best piece of land and give it to them; but that it might be better to take a poorer piece of land that they would regard as a better home place.

You know the islands originally—surveying not being known—were divided off into segments of a circle. They took natural points on the ocean and from rock to rock a line was drawn. And those lines were drawn from the point on the shore up to the top of the mountain so that the original grant made by the king to his chiefs and subchiefs, great landowners, retainers, were like slices of a cake.

And down on the coast you will find a rice swamp right on the edge of the ocean. Rice is not a product that is raised by the Hawaiians. The Chinese largely have the rice fields there now. Next to the rice swamp will be the higher lands, where sugar cane is grown. You pass from the sugar cane up perhaps into a coffee plantation. You pass from the coffee plantation up to a peach orchard. You pass from the peach orchard up to a wheat field, and you pass from the wheat field up into an oat field, you pass from the oat field up to grazing land, and from the grazing land right up to the snow. So that you start at the ocean and you pass through every climate that is within any part of the mainland of the United States, from the tropics to the Arctic. You get a slice of Panama and you get a slice of Alaska.

Mr. DOWELL. You have a very definite idea, however, that the title to this land should be retained by the Government, and it should only be given to them by a lease during the time the homesteader was willing to occupy and use the land?

Secretary LANE. Yes, sir; I have.

Mr. DOWELL. And whatever improvements were put on by this commission should be a part of the land, and if the homesteader failed to stay on the land and care for it then the next one who was willing to do so might have the benefit of the improvements?

Secretary LANE. Yes; I think that arrangements could be made by which the former occupant would be reimbursed for the value of the improvements by the successor.

Mr. HUMPHREYS. If he is to pay for the improvement he ought to acquire some specific right in the leasehold, the right to pass it on to his children, the right to pass it on to his heirs.

Secretary LANE. I think that unquestionably this land should go with the family.

Mr. HUMPHREYS. To make it a home.

Secretary LANE. Certainly.

Mr. HUMPHREYS. In fact, it would be simply a prohibition attached to the title against alienation.

Secretary LANE. Precisely.

Mr. HUMPHREYS. Otherwise it would practically be a fee.

Secretary LANE. Yes.

Mr. STRONG. Now, the land that might not be set apart, that might not be occupied by the Hawaiians should be rented by this commission and the proceeds taken for the commission to be used in the development of the lands until such time as they would want it.

Secretary LANE. No; I doubt that. They already have a land commission there, a land board that is handling these lands. I would not disturb that. I would continue to let them handle all of the land that did not go into these specific purposes.

Mr. STRONG. I know, but the lands themselves should be kept until such times as the Hawaiians might need them. You have said here that they were vanishing rather rapidly. We hope by this legislation to aid them to recuperate and they might 50 or 100 years from now want all of this land, and we ought to keep it for them.

Secretary LANE. I think you might very well reserve a sufficient body of the land to take care of the future. I would not say that all or a great part would be of any use to them.

Mr. DOWELL. What proportion of those people do you think would be interested in this homestead law and would occupy the land?



Secretary LANE. I have no way of knowing that. I talked with a good many of the natives while there, who were interested in some such plan, who felt a sense of outrage that they were homeless, and I know that there is constant application made to the Government there for land by these people; but, as we know from history, when they have been allotted land in many cases, perhaps in a majority of the cases—I should say more than a majority—those people have sold their land to plantations, or to Japanese, or to others, and have found themselves at the end of a few years just as bad off as before. Nobody can tell you just how many of them would go on the land, but certainly not the thirty-eight or forty thousand. There would be no such problem as that to deal with immediately.

The CHAIRMAN. Mr. Secretary, in the United States, proper, to secure a homestead, a man must live on it five years before he receives a title to the land, and in the meantime he can not mortgage this government land on which he is living. And, he is required to do certain things, make certain improvements. At the end of five years, of course, you give him a title. Now, do you think it would reach the same results, so far as trying to relieve the people in the Hawaiian Islands, in the rehabilitation of the Hawaiian people, if you would place these people on five or a hundred acres of land, according to the character of the soil necessary for them to make a living on, probably 10 acres, or 20 acres, or 100 acres, and prohibit them from mortgaging the land to anyone but this governmental agency that advances the money for their homes, and for their farming implements, and for their stock and the breaking of the land, and then compel them or their heirs to live on the land for from twenty-five to fifty years before receiving a title to the land, but eventually give them a title to the land.

Secretary LANE. I should say that the wiser thing to do, Mr. Chairman, would be to await that 25 years and then legislate upon the proposition, if you feel at that time that they have settled down so that it is a safe thing to do. And, I say that out of my experience with the Indians. We are every few days extending the trust period, as you know, for many of our Indians who have had their land in trust for 25 years. And, there are a good many, a great many who never ought to have been given their land and who have alienated the land that was given to them. Some day or other they will be cast back on the State in which they live and be a burden to the State. The policy which we have adopted during this administration regarding Indians is that those who are competent—and we sent out competency commissions to determine their competency—those who are competent and can prove their competency to handle their own affairs are given a fee simple title to their land.

The CHAIRMAN. In the Territory of Hawaii there are a great many acres of valuable land upon which the leases are about to expire, which are now sugar plantations. Do you think that those lands should be leased, or should they be sold or should the Hawaiians have the opportunity of going on these lands and homesteading them?

Secretary LANE. I should say that probably most of those lands should be leased. There are some places where the Hawaiians could very properly, I think, be given homes. We have tried that

near Hilo, where we took a plantation and cut it up, divided it, and homesteaded it. It did not work to the benefit of the natives, because the law required that it should be sold at practically its value. They did not have the price to pay.

Mr. JOHNSON. Mr. Secretary, that is the very proposition. They had a great big plantation that was worth \$2,000,000 or possibly \$3,000,000 as a plantation, I believe. It was appraised at \$540,000 and cut up into homestead tracts, and now the homesteaders are insisting on paved roads through it. The plantation is gone, or will be gone, I suppose. That is the problem.

The CHAIRMAN. The governor and some of the delegation stated to the committee that they believed these lands the leases of which are about to expire could be leased for from \$500,000 to \$750,000 a year; not to one person, but to a number of different plantations, and it was suggested that probably 40 per cent of that money could be turned over to this rehabilitation committee for the use of placing the Hawaiians on these homesteads and the rest could go into the general fund of their Territory. Do you think that would be the better way of handling these lands, the leases of which are about to expire, than to sell them?

Secretary LANE. Yes, sir.

The CHAIRMAN. So do I.

Mr. JOHNSON. May I ask a question? This proposition, I believe, is double headed. It is clear to me that the two phases of it are going to conflict. That plan you have just discussed may be desirable, but at the same time there comes a proposition as to the ownership and the amount of land the homesteader will cultivate, the Government land commission, the power to pass upon applications for homestead land, authority, and so on. Now, suppose there is a plan devised by which the homesteader would have a leasehold on a piece of land, but less desirable than that which is to be taken from an expiring plantation lease. That homesteader will be dissatisfied.

Secretary LANE. I think that is undoubtedly true.

Mr. JOHNSON. And that if you permit the plantation proper to be cut up into homesteads, you jeopardize the business in that island, which is mainly sugar.

Secretary LANE. There is no way by which you can get a settlement of the land question that will suit everybody any more than a settlement can be made in the United States that will satisfy everybody. It is always a problem in a new country as to how long you should allow land to go in great bodies. In my judgment, these sugar lands are lands that for the time being should largely be operated in large bodies, for this reason, not that it is necessary with the most highly cultivated people, but because it is almost impossible to get people of small means and small vision to cooperate.

Mr. JOHNSON. I look upon it precisely as I look upon the great lumber industry of the North Pacific States. If a man is a small holder of timber, say 160 acres of timberland, he is going to have to sell it to somebody with capital and machinery to take off that timber. Now, these plantations have little railroads running over them, removable railroads, mills, capital, organization, etc., and—

Secretary LANE. The only thing that can be done wisely, in my judgment, is to look toward the day when these lands can be divided into small holdings, but that must be regarded as an ideal and not a thing easy of accomplishment, or immediately at hand.

The CHAIRMAN. Has anyone else any questions to ask?

Mr. MONAHAN. I would like to ask a question as to one thing. You speak about the Hawaiians not being considered able to grasp our system of government for the reason that they have been a communistic community and had feudalism for centuries, and not being able to grasp the situation as we who have another system of government. Have they the same characteristics along that line as the American Indians?

Secretary LANE. Yes, I think it is the same.

Mr. MONAHAN. And, a second question I want to ask is, what has caused this dying away of the race from 200,000 down to thirty-five or forty thousand?

Secretary LANE. Two things. It is always incident to the coming in of civilization, and we always carry disease germs with us to which those people are not immune. Take in Alaska to-day, the influenza and smallpox goes into a village in Alaska and will take one-half of the population. Of course, there are no such ravages in the United States because we, in the course of time, have become somewhat immune to those germs.

Mr. DOWELL. And then, too, we are better equipped to care for them.

Secretary LANE. Yes, better equipped to fight, both on the insides of ourselves and outside of ourselves. We have better medical facilities and, of course, we have developed within ourselves a fighting germ in opposition.

No one can say what the fate of a race is. To-day the Indian in the United States is probably increasing. We have 320,000 people of some Indian blood, one hundred and more thousand of those who might be called full-blood Indians. By reason of the facts of putting hospitals on the reservations and doctors and bringing the women when they are bearing children to the hospital, their population is increasing so that we probably have more Indians in the United States to-day than we had during Lincoln's time. And we shall probably have more Indians 10 years from now than we have to-day. These people, the Hawaiians, of course, live an out-of-door life, but they are subjected to the diseases that were brought to them by the sailors a long time ago. They have the taste that many of us have for a good or a poor article of liquor, and those things together have decimated them.

Mr. HUMPHREYS. I was told when in the islands that probably the measles had killed more of them than anything else.

Secretary LANE. Of course that is a very dangerous disease when it is not properly taken care of.

Mr. WISE. If I may interrupt, it was the smallpox that carried off more than any other disease.

The CHAIRMAN. Is it not true that the measles carried off almost one-half?

Mr. WISE. The measles carried off a big lot of the people, but we lost more from smallpox than from anything else.

Mr. STRONG. Mr. Secretary, I take from your statement that you believe that all of the lands over there should practically be set aside for the benefit of the Hawaiians.

Secretary LANE. No; I do not believe any such thing.

Mr. STRONG. I took it that you want a commission to retain the title and place the Hawaiians on the land and use the proceeds from the other lands for the purpose of improving the land.

Secretary LANE. No; the proceeds or revenue coming from the leased or other lands would provide for the improvements. But that amount need not be very great, because it would be a revolving fund and the amount that would be necessary would be extremely small. In the law they have now, their farm loan act, I think it is limited to a thousand dollars. That would be ample, of course, in a country such as that.

Mr. STRONG. But you would prevent these lands from falling into the hands of undesirable owners or being acquired by great corporations?

Secretary LANE. Yes.

Mr. STRONG. So that the people might enjoy them.

Secretary LANE. Yes, sir.

Mr. HUMPHREYS. If it is intended for them to use those lands themselves, and put teams and stock on them that are necessary, do you think a thousand dollars would be sufficient?

Secretary LANE. Yes; because the most of the houses that the Hawaiians would want and feel comfortable in would be a house that would not cost very much. And most of the work that would be done would be hand labor. You see those people live very largely on fruits they have cultivated, and they would have their coconuts and their bananas and such things. Then most of the homes would never be any such farms as we know in this country.

Mr. SHINGLE. Mr. Secretary, I understood that you favored leasing all the highly cultivated lands and the proceeds from the rentals to be used for public works. That you endorse the principles of the Wise scheme; that is, a portion of the public lands be set aside for the rehabilitation of the Hawaiians. Now, there is one question I want to ask you, Mr. Secretary. Do you favor a portion of the Government lands being homesteaded, and to have all other classes of citizen entitled to participation therein or would you shut them out at this time, Mr. Secretary?

Secretary LANE. I don't think I would. I think that thing will have to be left very largely to the discretion of the officials you will have there and they must determine, they should wisely determine, whether there is a body of men who could go upon homestead land and make real homes.

Now, in Australia they have adopted the method of determining whether a man ought to have land or not. The men who will not use it or can not use it profitably do not get it. I do not believe in using our homestead laws for the purpose of making money for a man, making a man a thousand dollars, or five thousand dollars at the end of two or three years. I do believe in fastening a man to the soil and that there is a very great psychological value in having a man feel that a part of the soil is his.

Mr. JOHNSON. But, Mr. Secretary, take yourself. You might retire from a long, useful public life, but practically without means—I hope not—and might be the very man who would want only 10 acres of this Hawaiian land to live on, and yet this board might say that you never could adapt yourself to get any money out of the soil; and yet you would know better.

Secretary LANE. That is probably true, and I think that if I want it, and it is not impossible, if I wanted a piece of land in the Hawaiian Islands, that I ought to be put on that land upon trial and if I could make good use of that land that I should be allowed to use it, and if I could not make good use of it, I should not be allowed to stay there.

Mr. JOHNSON. Of course, the illustration in your case is not apt, because you have not residence there.

Secretary LANE. Certainly; that is what I mean. I mean if I went there and did ask for 10 acres and it was required that 50 per cent of that land should be cultivated and I did not cultivate it, I ought not to be allowed to hold that land.

Mr. JOHNSON. Exactly.

Mr. DOWELL. In other words, you want all of the land in production, you want it all kept in production.

Secretary LANE. It will be necessary. That place is going to have a very large population just as soon as the people realize how beautiful it is and what a wonderful climate they have.

The CHAIRMAN. We want to be careful in this legislation to encourage the cultivation and production so far as possible of sugar and not decrease it; while I do not think the Hawaiian Islands should depend on sugar, they produce sugar, and they should have a little more diversified farming; but still the world needs sugar and we ought to encourage its production. And, the only way we can encourage its production seems to be to lease this land to plantations. That is a matter for us to consider very carefully.

Secretary LANE. There is another thing to be considered in that connection, Mr. Chairman, if the Hawaiian Islands are to produce the sugar which we need. We must look after it in the future and we must make it possible for them to continue that industry. And it is a very difficult thing for people except of the very highest grade of intelligence to so work together with small holdings. They must have mills and railroads and transportation facilities. Now, my judgment is that that time will come; but it will come in this country, too; and yet I have found on our reclamation projects the very greatest difficulty in getting the farmers to club together for the purchase of a common tractor.

The CHAIRMAN. It is almost impossible to get them to do it.

Mr. MONAHAN. I think you are absolutely correct.

Mr. DOWELL. May I suggest one other question? As I understood the proposition here is to provide for the people who are of Hawaiian blood. What do you suggest with reference to the constitutionality of the proposition that applies to this distinct race as against any other of the citizens of the islands?

Secretary LANE. Well, I have not thought that there was any serious difficulty—any constitutional difficulty—or question. I would to-day vote on a proposition of that kind without any question of doubt in my mind. I think we have got a situation there that can be distinguished from any other situation. We have got the right to set aside these lands for this particular body of people, because I think the history of the islands will justify that before any tribunal in the world.

**Mr. DOWELL.** And you base your opinion as a matter of right and not as a matter of citizenship?

**Secretary LANE.** I would base it upon the broad ground that the United States wishes to care for a certain body of its people whose islands have come to us and for whom we feel a moral obligation to care.

**Mr. DOWELL.** In other words, you would establish the same principle that is established in dealing with the Indians?

**Secretary LANE.** It would be an extension of the same idea.

**The CHAIRMAN.** I do not see that there is any constitutional inhibition in the way, but the attorney general of the Territory will file a legal brief on that point. It seems to me that we have just as much right—the United States Government has just as much right—to provide lands for the Hawaiians as it has to provide lands for the Indians.

**Secretary LANE.** Or the soldiers.

**The CHAIRMAN.** Or as it has to give a preference right to soldier veterans.

**Secretary LANE.** Precisely.

**The CHAIRMAN.** If one is unconstitutional the other is.

**Secretary LANE.** We have always made preferences in our land laws.

**Mr. DOWELL.** As I understand, only those of the Hawaiian blood will have this opportunity?

**Secretary LANE.** Yes; will have this opportunity.

**Mr. DOWELL.** So it is not a free privilege, but it is a right that should be given to them, and they should be put ahead of any other persons in that respect.

**Secretary LANE.** It is just like the problem that I submitted to Congress a year or so ago regarding the soldiers. We wanted to take land, public land, and improve it, loan the money to improve these lands, and turn them over to the soldiers of this war. Now, that bill was passed through the scrutiny of the Senate and House committees. No doubt you gentlemen are very familiar with the bill. It was known originally as the Taylor bill. It is now known as the Mondell bill. And, the question has never been raised as to our right to do that. We have a right to give those men that privilege; why haven't we a right to do the same thing as to these people?

**Mr. SHINGLE.** Mr. Secretary, we have an opinion of your own solicitor on that very question. The question was asked: "Would an act of Congress setting apart a limited area of the public lands of the Territory of Hawaii for lease to and occupation by native Hawaiians be unconstitutional?" His answer is: "It would not. There are numerous congressional precedents for such action." Then, he refers to Indian allotments and allotments to soldiers.

I was going to suggest that the Secretary might insert that in the record. It is from the Solicitor of the Interior Department.

**The CHAIRMAN.** With Mr. Lane's consent the opinion will be printed in the hearings.

(The paper referred to above is printed in full in the record as follows:)

Would an act of Congress setting apart a limited area of the public lands of the Territory of Hawaii for lease to and occupation by native Hawaiians be unconstitutional? It would not. There are numerous congressional precedents for such action. The act of Congress approved February 8, 1887, as amended by the act of February 28,

1891 (26 Stat., 794), authorizes public lands which have been set apart as Indian reservations by order of the President to be surveyed and 80 acres of land therein to be allotted to each Indian located upon the reservation, or where the lands are valuable for grazing, to be allotted in areas of 160 acres. Another section of the same act authorizes any Indians entitled to allotment to make settlement upon any public lands of the United States, not otherwise appropriated, and to have same allotted to them.

Resolution No. 20, passed by the House of Representatives December 10, 1919, and by the Senate February 5, 1920, gives to soldiers of the late war a preference right over all other citizens to enter public lands of the United States when same shall be open to disposition. H. R. 11553 proposes to set apart a large area of valuable public lands in Imperial Valley, Calif., for disposition to soldiers. Many instances might be cited where Congress has conferred special privileges or advantages upon classes of individuals in connection with the disposition or use of public land. Another line of acts of Congress are the numerous laws setting apart areas of public lands for water supply or park purposes of cities, counties, and towns.

Mr. HUMPHREYS. I would like to ask one or two questions along that line. You said that you believe or hoped that there will be a large population in the islands. And, of course, we ought to, we want to be able to care for that population. The Government now in its public works does not limit the employment to American citizens. On the other hand it does employ many aliens on the Government works, for the reason first, I suppose, they can get those aliens for less money. Now, suppose they were prohibited from doing that, would not that tend to bring the laborers from the coast over to the islands?

Secretary LANE. I do not know what body of labor they have there; but I don't know any great embarrassment that would come if such a prohibition was passed.

Mr. HUMPHREYS. Undoubtedly it would make the public works cost more money; but, even so, would it not be a good thing for the country because it would induce laborers to go there from the coast to the islands, having the thought when they went there that they were going there for a time for a temporary position, but as is true and as has always been true many of them would remain. Have you thought about that?

Secretary LANE. I have not been doing any work, of course, down there, excepting the most incidental work, and I do not have any knowledge of that situation. The only large work I know of there is in connection with the dry dock and harbor. I think the Territory is now caring for its harbors but that the Navy Department or War Department have some really large public works.

Mr. HUMPHREYS. The War Department is taking care of that?

Secretary LANE. Does it take care of the harbor at Hilo?

Mr. HUMPHREYS. I think it does, just as it takes care of the harbors in the other parts of the country.

Secretary LANE. They have a harbor commission down there?

Mr. HUMPHREYS. Yes; they have a harbor commission, but with the same duties and with the same limitations that the harbor commissions of our various States have, but the Federal Government makes appropriations for them, and for the building of breakwaters, etc. They have done work there on the harbor at Honolulu and at Hilo Bay. I would like to ask the gentleman another question along the same lines. Under the coastwise laws a man can not get on a foreign vessel, for instance, to go from New York to New Orleans without paying a fine, but, of course, if he had to go to New Orleans and there was no American vessel ready to take him, he could get on

a train and go there. That isn't true if he wants to go to Hawaii. If he wants to go to Honolulu, he can not do it. Our laws are such that he has to go on an American vessel from the coast to the islands or from the islands back, or subject himself to a fine or rather the owners of the ship to a fine which they assess in advance on him.

Now, in order to attract visitors to the islands, don't you think it would be advisable for the Federal Government to modify the coast-wise laws to favor that Pacific traffic so that men could go to the Islands on any ship that happened to be going there or come back on any ship?

Secretary LANE. I do.

Mr. HUMPHREYS. The same as to other countries?

Secretary LANE. I do.

Mr. HUMPHREYS. I know of a party that was going from my town in Mississippi. I had talked so much about the islands since I was over there that they concluded that they would go to the islands on a visit. They found they could make arrangements to go over, but they had no assurance as to when they could get back. Now, those people would have visited the islands had it been made possible for them to have visited the islands and then get back home. People ought to be permitted to visit the islands and come back home whenever a ship appears that is coming home. Then, there would be a number that would like to go and would be glad to go, and would go to the islands and in the course of time, after visiting within the islands, some of them would conclude to stay there. Now, wouldn't that contribute toward the future population of the islands by desirable people?

Secretary LANE. I think the more people who see those islands the better. Anything that we can do by which we can promote travel will be helpful to them and to us. They are an integral part of our country and we ought to have just as full knowledge of their conditions as possible. Of course, you realize that conditions now on the Pacific and for the last five years have been extremely difficult as to shipping, and there have been hundreds of our people in the islands waiting to get to San Francisco who have not been able to make the trip within three or four months of the time they had scheduled. I, myself, with the conditions that are existing in the world to-day, believe it will be a long time before we will have adequate shipping facilities on our oceans, and that it would be a very wise thing to lift some of the bans that have been placed in the past. I think we are generally getting away from those notions that there should be preferences or protection given in that connection.

Mr. HUMPHREYS. I have known of two instances, which have come under my observation, of parties in the Hawaiian Islands, who wanted to hasty back to the United States, going down to the wharf when a ship came in from the Orient, but these people could not get passage. There was room, and they actually could accommodate them, good accommodations, but they could not take them, being foreign ships, without paying a fine of \$200. And, in these two instances I happen to recall, they paid the fine. Now, that ought not to be. If preference is going to be given to our ships, of course they ought to be obligated, ought to be bound to furnish passage.

Secretary LANE. Of course, you have got to consider the conditions you make as to American shipping, the exclusion of orientals,



the necessity of an English-speaking crew, the amount of space necessary, and things of that kind which naturally necessitate higher wages, and have got to determine whether this privilege you have given down there to the American ships is worth while or not.

Mr. HUMPHREYS. I would only give this privilege to passengers traveling. I do not mean to give it to freight.

Secretary LANE. I understand.

The CHAIRMAN. You must remember that during the war the United States Government took all of those ships that we had on the Pacific, including those on the run between San Francisco and the Hawaiian Islands. We did not have many ships on the Pacific during the war nor up to the present time. Recently the Shipping Board has permitted the Matson Line to put three ships back on the route between San Francisco and Hawaii, and the Matson people are now building a bigger and a better ship for the trade between San Francisco and Hawaii.

We have been trying to get some ships for the Pacific for some time. The Shipping Board promised us 10 ships, two months, and one month ago for the coasting trade between the Pacific coast and the Atlantic coast. We have not got one yet. They are using a lot of ships for freight across the Atlantic and to the South American ports, but we have no ships for the Pacific trade. Now, we could relieve the sugar shortage to a great extent on the Atlantic coast if we could get the ships to transport the beet sugar of the Pacific coast through the Panama Canal, but we can not get the ships; neither can we get the cars. But that condition was caused by the war situation, which no one could help. We have now—I have forgotten how many tons of shipping—but we are second in the world, and when there is a readjustment of economic conditions from the war to peace time, and there is really peace in the world, and there has been a crop or two raised in Europe, conditions will be better. The cost of everything will come down, shipping rates and freight rates included. We will have all the ships we will need. At the present time we have not got them because the Shipping Board does not have them for us. They have permitted the Matson Line to put on three ships between San Francisco and Honolulu and the Matson Line is building another ship now with the assurance of the Shipping Board that they will be allowed to use that in the same trade. That will be four. Of course, during the war the shipping situation on the Pacific was acute and Japan had pretty nearly an absolute monopoly, and she has yet, but I believe that the Federal Government, I believe that the Shipping Board and Congress, is trying to do the best they can to keep the American merchant marine on the ocean. There are two or three things I would not do.

I would not sell a ship of the fleet, I would not sell one to England, France, Italy, or any other foreign nation at the present time. Great Britain does not sell any of her ships to us. We have sold quite a number of ships which are now flying the British and other foreign flags. I do not think we ought to do that. Of course, these ships have cost us money and are being sold at a profit, but money is not the only thing in the world. Sometimes you can make money and lose prosperity by it. We need the ships and we ought to keep them, and while they have cost us a lot of money, they have cost

us \$100 to \$150 more a ton than they could be built for in peace times, but so far as I am concerned I think the money was well spent, and I am willing to charge it off to profit and loss as a war measure and keep the ships. If the Shipping Board wants to get out of business, and I think the United States should get out of the business, they could sell the ships to Mr. Humphreys, or Mr. Dowell, or anybody that is an American citizen who will run the ships, but don't let them sell the ships to a foreign nation.

Of course, this committee has got nothing whatever to do with the shipping situation. The measures mainly put through by this Congress and the legislation of this Congress and of the next Congress, upon that question will depend upon whether or not we are going to have ships of our own to do our business on the ocean. If we are going to enact such legislation as we have enacted during the last four or five months, I am afraid that within 10 years there will not be a ship flying the American flag in the overseas trade. I think we should enact legislation that will maintain American supremacy on the ocean, and I am for maintaining our supremacy on the ocean.

Mr. STRONG. Mr. Chairman, we could, I think, very properly change some of the rules we have regarding our own ships. During the Christmas holidays a party of Congressmen went down to Panama on *Princess Matoika*, which is about an 11,000-ton ship. Coming back we stopped at Porto Rico; we had a cargo of only about 3,000 tons. We had room on that ship for 8,000 additional tons. They were unable to ship sugar from that port because there was no available shipping and we had to leave that port with room for 8,000 tons of sugar, with the sugar laying at the port, piled up, without bringing any of that sugar. It seems to me that conditions should be remedied by changing the rules or laws regarding the carrying of freight on transports. I suppose it is prohibited to protect the individual shippers, but if the individual shipper does not provide the boats it seems to me that the Government ought to have provided rules which would have permitted 8,000 tons of that sugar which was so very badly needed in the United States to have been loaded on our transport and brought back with us.

Some of the Congressmen took up the proposition of sending a message to the Secretary of War but were told that there was a law against it that would prohibit taking any freight on United States transport ships.

The CHAIRMAN. There is a law against it in peace times, but this is an emergency, and we are not now at peace.

Mr. STRONG. We ought to have a little more elastic laws, it seems to me.

The CHAIRMAN. We ought to have in matters of that kind. Of course, I do not believe in putting the transports into the overseas trade regularly, but I think there is no reason why they should not have carried that freight.

(Whereupon, at 12.15 o'clock p. m., the committee adjourned.)

COMMITTEE ON TERRITORIES,  
HOUSE OF REPRESENTATIVES,  
February 10, 1920.

The committee met at 8.25 o'clock p. m., Hon. Charles F. Curry (chairman) presiding.

The CHAIRMAN. The committee will come to order. There is a quorum present.

I have been handed by the legislative commission of Hawaii two bills for the consideration of the committee and Congress. The first bill is "An act to provide for the rehabilitation and colonization of Hawaiians on certain public lands of the Territory of Hawaii, and for other purposes." The second bill is "An act to amend an act entitled 'An act to provide a government for the Territory of Hawaii.'"

I will hand these two tentative drafts of the bill to the reporter with the request that he include them in the hearing.

(The drafts of the proposed bills follow:)

AN ACT To provide for the rehabilitation and colonization of Hawaiians on certain public lands of the Territory of Hawaii, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Governor of Hawaii, by and with the consent and approval of the Legislature of the Territory of Hawaii is hereby authorized and directed to appoint a commission which is hereby created to be known as the Hawaiian Homes Commission, hereinafter referred to as the commission, to consist of four citizens of the Territory of Hawaii, two of whom shall be persons of whole or part Hawaiian ancestry. The Governor of Hawaii shall be a member and ex officio chairman of said commission. The members of said commission shall serve without salary and shall submit a report of their doings to the Legislature of Hawaii biennially.

SEC. 2. The said commission is hereby authorized and directed to provide for the use and disposition by and to persons of whole or part Hawaiian ancestry, in accordance with the provisions of this act, of the following-named public lands of the Territory of Hawaii, namely, the lands on the Island of Hawaii known as Kamaoa-Puueo (11,000 acres more or less), in the district of Kau; Puukapu (15,000 acres more or less); Kawaihae I (13,000 acres more or less); and Pauahi (750 acres more or less), in the district of South Kohala; Kamoku (5,000 acres more or less) and Nienie (7,350 acres more or less), in the district of Hahakua; the lands of Humuula Mauka (53,000 acres more or less), in the district of Hilo; the lands on the Island of Maui known as Kabinui (25,000 acres more or less), in the district of Kahikinui and the Government remnants in the district of Kula (6,000 acres more or less); the lands on the Island of Molokai, known as Pallasu (11,400 acres more or less), Kapaakea (2,000 acres more or less), Kalamaula (6,000 acres more or less), Hoolehua (3,000 acres more or less), Kamilo I and II (3,600 acres more or less), and Makakupaia (2,200 acres more or less); the Government remnants in the land of Waimanalo (4,000 acres more or less), Island of Oahu, excluding therefrom the cane lands, the military reservation, and the beach lands; and the Government remnants in the lands on the Island of Kauai, known as Waimea (15,000 acres more or less), Molokaa (5,000 acres more or less), and Anahola (2,500 acres more or less).

*Provided, however,* That the provisions of this act shall not apply to any portions of the above designated lands which may be within a forest reservation.

*And it is further provided,* That as the demand and the necessity for the same shall arise, the commission shall, from time to time, select other public lands of the Territory of Hawaii of the same or similar quality and the lands herein specifically named and the said lands when so selected and set apart shall be used for and devoted for the purposes of this act in the same manner and to the same extent as though specifically named herein.

SEC. 3. That the foregoing named public lands and any public lands hereinafter selected and set apart for the purposes of this act shall be administered and controlled by said commission and shall be leased to persons of whole or part Hawaiian ancestry for a term of nine hundred and ninety-nine years, in tracts not to exceed eighty acres of second-class agricultural lands and (or) not to exceed five hundred acres of first-class pastoral land, and (or) not to exceed one thousand acres of second-class pastoral land for a rental of \$1 per year for each homestead and upon condition that the lands be occupied, used, and (or) cultivated by the lessee as a home or farm and

upon the further condition that the lease shall be subject to cancellation and the lands held for lease to other persons of Hawaiian ancestry upon the failure of the lessee to occupy, use, and (or) cultivate the same for a period of two years at any one time.

It is provided, however, in case of such cancellation, the value of the improvements on any such piece of land shall be determined by a board of three appraisers to be appointed by the governor, and the lessee's interest in said improvements shall be paid to such lessee by the commission from the Hawaiian Home Loan Fund, hereinafter authorized: *And it is further provided*, That when any such piece of land shall be again leased pursuant to the provisions of this act the succeeding lessee shall take such leased land and improvements, subject to a lien thereon in an amount equal to the total appraised value of said improvements to be repaid by such succeeding lessee in the same manner as in the case of an original loan as hereinafter provided.

SEC. 4. No lease made pursuant to the provisions of this act shall be transferrable or assignable except as between tenants in common.

SEC. 5. Any portion of the said public lands hereby specifically set apart, or which may hereafter be set apart for the purposes of this act, not actually allotted to and occupied by such persons of Hawaiian ancestry pursuant to the provisions hereof may be leased as by law now provided, and every such lease shall contain a provision that the lands described therein shall be withdrawn from the operation of such lease when the same shall be actually required for the purposes of this act: *And it is provided*, That, pending, the actual use and occupation of such lands pursuant to the provisions of this act the entire revenue derived from the said lands shall be paid into the Hawaiian Home Loan Fund for use by the commission as hereinafter provided.

SEC. 6. That from and after the date of the approval of this act, 30 per centum of all territorial receipts derived from the rentals of public lands and water rights and from the sale of public lands in the Territory of Hawaii for other than homestead purposes shall be set apart in the Treasury of the Territory of Hawaii and maintained as a special fund to be known as the Hawaiian Home Loan Fund. The said receipts shall continue to be paid into said fund until the aggregate amount of money so collected and paid into said fund shall amount to the sum of \$1,000,000. The moneys so deposited in such fund shall be used by the commission in making loans and advancements to lessees of land under this act at a rate of interest not to exceed 6 per centum per annum for the purpose of assisting in the development of said lands and for the erection of dwellings and other farm improvements and the purchase of live stock and farming implements, the repayment to the fund of such loans or advances to be made by the lessees in annual payments not exceeding thirty in number. The said loans or advances shall constitute a first lien upon said lease and other property of the lessee.

SEC. 7. That for the purpose of providing the necessary funds with which to undertake and carry on any general water or other general development work which may not be charged directly to any such lessee, the Legislature of the Territory of Hawaii is hereby authorized to insert in its next and succeeding public-loan acts an item or items sufficiently large to complete such general development work, and bonds may be issued as provided by law to the extent necessary to yield the necessary amount. The said commission shall pay into the Treasury of the Territory from the said Hawaiian Home Loan Fund, on the interest dates of any bonds that may be issued by the Territory for the purposes of this act, interest upon an amount equal to the par value of such bonds at the rate of interest specified in such bonds and also such sums annually on the second interest date and the same date each year, thereafter, during the term for which such bonds shall have been issued, so that the aggregate of such sums so annually paid will, compounded annually, at such rate of interest equal at the expiration of such term such par value.

SEC. 8. That the said commission is hereby authorized to employ an agricultural expert or experts upon such terms and for such salary as may be determined by the commission.

It shall be the duty of the said agricultural expert or experts to assist and advise the Hawaiian colonies established pursuant to the provisions of this act in the best method of diversified farming and stock raising, and in all matters which will tend to successfully accomplish the purposes of this act.

The salary of the said agricultural expert or experts shall be paid from the Hawaiian Home Loan Fund.

SEC. 9. That the commission is hereby authorized and empowered to do all necessary acts and things in addition to those specifically authorized by this act to enable them to accomplish the purposes and objects hereof.

The commission is further authorized and empowered to make and issue all necessary rules and regulations for the accomplishment of the purposes and objects of

this act, and from time to time to amend the same, which rules, when published, shall have all the force and effect of law.

Sec. 10. All necessary expenses incurred by the commission in the performance of its duties, pursuant to the provisions of this act, shall be paid from the Hawaiian Home Loan Fund upon vouchers approved by the chairman or such other person as may be designated by the commission.

Sec. 11. That all acts or parts of acts either of the Congress of the United States or of the Territory of Hawaii to the extent inconsistent herewith are hereby repealed.

AN ACT To amend an act entitled "An act to provide a government for the Territory of Hawaii," approved April 30, 1900, as amended by an act approved March 3, 1905, and as further amended by an act approved April 2, 1908, and as further amended by an act approved March 3, 1909, and as further amended by an act approved May 27, 1910, by amending sections 26, 53, 73, 86, and 92 thereof and by adding a new section thereto, to be known as section 103a.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:* SECTION 1. That section 26 of an act entitled "An act to provide a government for the Territory of Hawaii" approved April 30, 1900, as amended by section 2 of an act approved May 27, 1910, be, and hereby is, amended to read as follows:

Sec. 26. That the members of the legislature shall receive for their services, in addition to mileage at the rate of ten (10) cents per mile each way, the sum of \$1,000.00 for each regular session, paid in three equal installments on and after the 1st, 30th, and 50th days of the session, and the sum of \$500.00 for each special session: *Provided*, That they shall receive no compensation for any extra session held under the provisions of section 54 of this act.

Sec. 2. That that portion of section 55 of said act as amended by section 4 of an act approved May 27, 1910, which reads: "and the total indebtedness of the Territory shall not at any time be extended beyond seven per centum of such assessed value of property in the Territory," be and hereby is amended to read as follows: "And the total indebtedness of the Territory shall not at any time be extended beyond ten per centum of such assessed value of property in the Territory."

Sec. 3. That section 73 of said act as amended by an act approved April 2, 1908, and as further amended by an act approved May 27, 1910, be and hereby is amended to read as follows:

"Sec. 73. That the laws of Hawaii relating to public lands, the settlement of boundaries, and the issuance of patents on land commission awards, except as changed by this act, shall continue in force until Congress shall otherwise provide. That subject to the approval of the President, all sales, grants, leases, and other dispositions of the public domain and agreements concerning the same, and all franchises, granted by the Hawaiian Government in conformity with the laws of Hawaii, between the seventh day of July, eighteen hundred and ninety-eight, and the twenty-eighth day of September, eighteen hundred and ninety-nine, are hereby ratified and confirmed. In said laws 'land patent' shall be substituted for 'royal patent'; 'Commissioner of Public Lands' for 'Minister of the Interior'; 'agent of public lands' and 'Commissioners of Public Lands' or their equivalents; and the words 'that I am a citizen of the United States,' or 'that I have declared my intention to become a citizen of the United States as required by law,' for the words, 'That I am a citizen by birth (or naturalization) of the Republic of Hawaii,' or 'that I have received letters of denization under the Republic of Hawaii,' or 'that I have received a certificate of special rights of citizenship from the Republic of Hawaii.' And no lease of agricultural land shall be granted, sold, or renewed by the Government of the Territory of Hawaii for a longer period than fifteen years, and in every such case the land, or any part thereof so leased, may at any time during the term of the lease be withdrawn from the operation thereof for homestead or public purposes, in which case the rent reserved shall be reduced in proportion to the value of the part so withdrawn, and every such lease shall contain a provision to that effect: *Provided, however*, That whenever a general lease of public lands shall hereafter be terminated either by lapse of time, forfeiture, or surrender, which lands are suitable and available for homesteading, and which on the date of such termination, form the whole or a major part of the lands occupied and cultivated by any sugar plantation, the commissioner, with the consent of the governor and two-thirds of the land board, may lease not to exceed one-fifth ( $\frac{1}{5}$ ) of the cultivated area of the lands described in any such general lease for a term not to exceed fifteen (15) years, without such withdrawal clause, by sale of such lease at public auction to the highest bidder, after due advertisement thereof, and upon such terms as the said commissioner, with the approval of the governor and of two-thirds ( $\frac{2}{3}$ ) of the land board, shall determine, all of which said terms and conditions shall be set forth in the publi-

cation of the notice of sale of any such lease. No portion of the lower lands of Kekaha Plantation shall, however, be subject to be leased as in this proviso provided: *And further provided*, That in the case of undeveloped arid lands which are capable of being converted into agricultural lands by the development of the underlying and/or contiguous or adjacent waters for irrigation purposes, the governor and the land commissioner, with the approval of two-thirds of the land board, may lease such arid lands to any person, firm, or corporation, upon such terms and conditions as may be advantageous to the Territory of Hawaii, and for a sufficient length of time to induce and justify the investment of private capital in the development of the waters necessary for the irrigation of such arid lands and such lease shall not have contained therein, the withdrawal clause now provided for by law, and shall be sold at public auction to the highest bidder after due advertisement in the manner now provided by law, the notice of sale of such lease to contain all the terms and conditions of the same: *And further provided*, That the commissioner with the approval of the governor, may, at any time within two (2) years prior to the expiration of any general lease of agricultural land, or at any time after the expiration of such general lease, or when any homestead lots are not taken up, or taken up and abandoned, enter into a contract with any person, firm, or corporation for the continued cultivation of any such parcel or parcels of public lands, upon such terms as may be deemed of advantage to the Territory.

All such contracts and agreements shall provide for the continued cultivation of such lands until the same are ready to be homesteaded or ready to be reoccupied by homesteaders: *And further provided*, That all such homesteaders shall take such homesteads with the crops thereon, subject to a lien in favor of any such person, firm, or corporation, in an amount equal to the actual cost incurred by reason of such continued cultivation under such contract. The commissioner, with the approval of the governor, may require of any such homesteader at the time of entering into their special homestead agreements a contract which may be incorporated into such special homestead agreement, to continue the cultivation of their homesteads and to reimburse any person, firm, or corporation, who or which shall have done, under any such contract, any cultivation or other work on such lands, for the conservation of the crops thereon, to the amount of the actual costs thereof.

All funds arising from the sale or lease or other disposal of such lands shall be appropriated by the laws of the Government of the Territory of Hawaii, and applied to such uses and purposes for the benefit of the inhabitants of the Territory of Hawaii as are consistent with the joint resolution of annexation, approved July seventh, eighteen hundred and ninety-eight: *Provided*, There shall be excepted from the provisions of this section to all lands heretofore set apart, or reserved, by Executive order or orders, by the President of the United States.

No person shall hereafter be entitled to receive any certificate of occupation, right of purchase lease, cash freehold agreement, or special homestead agreement who, or whose husband or wife shall previously have taken or held more than ten (10) acres of any land under any such certificate, lease, or agreement hereafter made or issued, or under any homestead lease or patent based thereon; or who or whose husband or wife or both of them shall then own other land in the Territory, the combined area of which and the land in question exceeds eighty acres; or who is an alien, unless he has declared his intention to become a citizen of the United States as provided by law, nor shall any person who, having so declared his intention, hereafter take or hold under any such certificate, lease, or agreement, continue so to hold or become entitled to a homestead lease or patent of the land, unless he shall have become a citizen within five years after so taking.

No land for which any such certificate, lease, or agreement shall be hereafter issued, or any part thereof, on interest therein, or control thereof, shall without the written consent of the commissioner and governor, thereafter, whether before or after a homestead lease or patent has been issued therein, be or be contracted to be in any way, directly or indirectly, by process of law or otherwise, conveyed, mortgaged, leased, or otherwise transferred to or acquired or held by or for the benefit of any alien or corporation; or before or after the issuance of a homestead lease or before the issuance of a patent, to or by or for the benefit of any other person; or, after the issuance of a patent to or by or for the benefit of any person who owns, holds, or controls, directly or indirectly, other land or the use thereof, the combined area of which and the land in question exceeds eighty acres: *Provided*, That these prohibitions shall not apply to transfers or acquisitions by inheritance or between tenants in common.

Any land in respect of which any of the foregoing provisions shall be violated shall forthwith be forfeited and resume the status of public land and may be recovered by the Territory or its successors in an action of ejectment or other appropriate proceedings. And noncompliance with the terms of any such certificate, lease, or agreement, or of the law applicable thereto, shall entitle the commissioner, with the

approval of the governor before patent has been issued, with or without legal process, notice, demand, or previous entry, to retake possession and thereby determine the estate: *Provided*, That the times limited for compliance with any such terms may be extended by the commissioner, with such approval upon its appearing that an effort has been made in good faith to comply therewith.

The persons entitled to take under any such certificate, lease, or agreement, shall be determined by drawing or lot, after public notice as hereinafter provided. The land board of the Territory, with the commissioner and governor as ex-officio members thereof, shall examine into the qualifications and capabilities of all persons who participated in said drawing in the order of their numbers as drawn and shall pass upon and finally determine in said order of their number as drawn, the qualifications and capabilities of any such persons to undertake and successfully carry on the operations necessary for the successful farming of such lands. When any person shall have been found by such board to be unsuitable and without such necessary qualifications and capabilities, his or her name shall be stricken from the list of applicants and the next in order, as determined at said drawing, examined, and so on until the homestead lots are all allotted or the list of applicants exhausted. And any lot not taken, or taken and forfeited, or any lot or part thereof surrendered with the consent of the commissioner, which is hereby authorized, may be disposed of upon application at not less than the advertised price by any such certificate, lease, or agreement without further notice. The notice of any sale, drawing, or allotment of public land shall be by publication for a period of not less than sixty days in one or more newspapers of general circulation published in the Territory.

The commissioner, with the approval of the governor, may give to any citizen of the United States, or to any person who has legally declared his intention to become a citizen, and who shall hereafter become such, which said person has, or who and whose predecessors in interest have, improved any parcel of public lands and resided thereon continuously since January first, nineteen hundred and nine, a preference right to purchase so much of such parcel and such adjoining land as may reasonable be required for a home, at a fair price, to be determined by three disinterested citizens appointed by the governor, in the determination of which price the value of improvements shall, when deemed just and reasonable be disregarded: *Provided, however*, That if the land upon which any such person has, or who and whose predecessors in interest have, resided and so improved, has been or shall be hereafter reserved for public purposes either for the use of the United States of America or of the Territory of Hawaii, the commissioner may, with the approval of the governor, grant to any such person a preference right to purchase an equal area of public land of similar character and value, situated elsewhere in the same land district: *Provided further*, That this privilege shall not be extended to any original lessee or to an assignee of an entire lease of public lands.

The commissioner may also, with such approval, issue for a nominal consideration, to any church or religious organization, or person or persons or corporations representing it, a patent for any parcel of public land occupied continuously for not less than five years heretofore and still occupied by it as a church site under the laws of Hawaii.

No sale of lands for other than homestead purposes, except as herein provided, and no exchange by which the Territory shall convey lands exceeding either forty acres in area or five thousand dollars in value shall be made. No lease of agricultural lands exceeding forty acres in area, or of pastoral or waste lands exceeding one thousand acres in area, shall be made without the approval of two-thirds of the board of public lands which is hereby constituted, the members of which are to be appointed by the governor as provided in section eighty of this act, and until the legislature shall otherwise provide said board shall consist of six members and its members be appointed for terms of four years.

*Provided, however*, That the commissioner may, with the approval of the said board, sell for residence purposes lots and tracts, not exceeding three acres in area, and that sales of government lands may be made upon the approval of said board, whenever necessary to locate thereon railroad rights of way, railroad tracts, sidetracks, depot grounds, pipelines, irrigation ditches, pumping stations, reservoirs, factories and mills and appurtenances thereto, including houses for employees, mercantile establishments, hotels, churches, and private schools, and all such sales shall be limited to the amount actually necessary for the economical conduct of such business or undertaking: *Provided further*, That no exchange of government lands shall thereafter be made without the approval of two-thirds of the members of said board, and no such exchange shall be made except to acquire lands directly for public uses.

Whenever twenty-five or more persons having the qualifications of homesteaders who have not theretofore made application under this act, except as hereinbefore provided, shall make written application to the commissioner of public lands for the opening of agricultural lands for settlement in any locality or district, it shall be the

duty of said commissioner to proceed expeditiously to survey and open for entry agricultural lands, whether unoccupied or under lease with the right of withdrawal, sufficient in area to provide homesteads for all such persons, as may be found to be properly qualified and capable, as hereinbefore provided, together with all persons of like qualification who shall have filed with such commissioner prior to the survey of such lands written applications for homesteads in the district designated in said applications. The lands to be so opened for settlement by said commissioner shall be either the specific tract or tracts applied for or other suitable and available agricultural lands in the same geographical district, and, as far as possible, in the immediate locality of and as nearly equal to that applied for as may be available: *Provided, however*, That no leased lands, under cultivation, shall be taken for homesteading until any crops growing thereon shall have been harvested.

It shall be the duty of the commissioner of public lands to cause to be surveyed and opened for homestead entry a reasonable amount of desirable agricultural lands and also of pastoral lands in various parts of the Territory for homestead purposes on or before January first, nineteen hundred and eleven, and he shall annually thereafter cause to be surveyed for homestead purposes such amount of agricultural lands and pastoral lands in various parts of the Territory as may be demanded for by persons having the qualifications of homesteaders, and in laying out any homestead the commissioner of public lands shall include therein an amount, not exceeding 80 acres in area, of agricultural land and not exceeding one thousand acres of pastoral land, sufficient to support thereon an ordinary family; and before proceeding to survey and open for homestead entry any pastoral lands of the Territory of Hawaii, the commissioner shall classify all such pastoral lands into two classes, the first class being all such lands as from their nature can be plowed and seeded to grass and other forage plants suitable for stock raising, and the second class being all other pastoral land which by reason of the nature of the soil and the topography of the country is such that it precludes the cultivation or improvement of the same as grazing lands. All pastoral lands which shall be classified as "first-class pastoral land" shall be surveyed and opened for homestead entry in areas of not less than two hundred and not more than five hundred acres, and all such lands which shall be classified as "second-class pastoral land" shall be surveyed and opened for homestead entries in areas of not less than five hundred acres nor more than one thousand acres.

And it is provided that the commissioner, with the approval of the governor, may enter into a contract or agreement with any person, firm, or corporation having possession of such pastoral lands under a lease from the Territory of Hawaii for the continued possession of such lands after the expiration of such lease under terms and conditions to be fixed by the commissioner of public lands with the approval of the governor, which contract or agreement shall cover the period following the expiration of such lease up to and until the homesteader or homesteaders shall take actual possession of such pastoral land under any form of homestead agreement. And all necessary expenses for surveying and opening any such lands for homesteads shall be paid for out of any funds of the territorial treasury derived from the sale or lease of the public lands, which funds are hereby made available for such purposes.

Nothing herein contained shall be construed to prevent said commissioner from surveying and opening for homestead purposes and as a single homestead entry public lands suitable for both agricultural and pastoral purposes, whether such lands be situated in one body or detached tracts, to the end that homesteaders may be provided with both agricultural and pastoral lands wherever there is demand therefor; nor shall the ownership of a residence lot or tract not exceeding three acres in area hereafter disqualify any citizen from applying for and receiving any form of homestead entry, including a homestead lease.

All lands in the possession, use, and control of the Territory shall hereafter be managed by the commissioner, except such as shall be set aside for public purposes as hereinafter provided. All sales and other dispositions of such land shall be made by the commissioner under his direction, for which purpose, if necessary, the land may be transferred to his department from any other department by direction of the governor, and all patents and deeds of such land shall be issued from the office of the commissioner, who shall countersign the same and keep a record thereof. Lands conveyed to the Territory in exchange for other lands that are subject to the land laws of Hawaii, as amended by this act, shall, except as otherwise provided, have the same status and be subject to such laws as if they had previously been public lands of Hawaii. All orders setting aside lands for forests or other public purposes, or withdrawing the same shall be made by the governor, and lands while so set aside for such purposes may be managed as may be provided by the laws of the Territory. The commissioner is hereby authorized to perform any and all acts, prescribe forms of oaths, and, with the approval of the governor and said board, make such rules and



regulations as may be necessary and proper for the purposes of carrying the provisions of this section and the land laws of Hawaii into full force and effect.

"Sec. 4. That the second, third, and fourth paragraphs beginning with the words 'The President of the United States,' and ending with the words 'exceeds the sum or value of \$5,000.00,' of section 86 of said act as amended by an act approved March 3, 1905, and as further amended by an act approved March 3, 1909, be, and hereby is, amended to read as follows:

"The President of the United States, by and with the advice and consent of the Senate of the United States, shall appoint two district judges, a district attorney, and a marshal of the United States for the said district, all of whom shall be citizens of the Territory of Hawaii, and said judges, attorney, and marshal shall hold office for six years unless sooner removed by the President. The said court shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction over all cases cognizable in a circuit court of the United States, and proceed therein in the same manner as a circuit court, and the said judges, district attorney, and marshal shall have and exercise within the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges, district attorneys, and marshals of district and circuit courts of the United States: *Provided, however,* That all persons appointed to office or to any lucrative position in the Territory of Hawaii by any such judge, district attorney, or marshal, or by the Attorney General of the United States shall be citizens of said Territory.

"Writs of error and appeals to the said district court shall be had and allowed to the Circuit Court of Appeals for the ninth judicial circuit in the same manner as writs of error and appeals are appealed from circuit courts to circuit courts of appeal, as provided by law, and appeals and writs of error may be taken to the Supreme Court of the United States from said district court in cases where appeals and writs of error are allowed from the district and circuit courts of the United States to the Supreme Court, and the laws of the United States relating to juries and jury trials shall be applicable to said district court. The laws of the United States relating to appeals, writs of error, removal of causes, and other matters and proceedings, as between the courts of the United States and the courts of the several States, shall govern in such matters as proceedings as between the courts of the United States and the courts of the Territory of Hawaii. Regular terms of said court shall be held at Honolulu on the second Monday of April and October, and special terms may be held at such times and places in said district as the said judges may deem expedient.

"The said district judges shall appoint a clerk of said court at a salary of \$3,500 per annum, and shall appoint a reporter of said court at a salary of \$1,800 per annum. The clerk of said district court, with the approval of the said district judges, shall appoint one deputy clerk at a salary of \$2,500 per annum, and a second deputy clerk at a salary of \$1,500 per annum."

Sec. 5. That section 92 of said act as amended by an act approved May 27, 1910, be and hereby is, amended to read as follows:

"Sec. 92. That the following officials shall receive the following annual salaries, to be paid by the United States: The governor, \$10,000; the secretary of the Territory, \$5,400; the chief justice of the Supreme Court of the Territory, \$8,000; the associate justices of the supreme court, \$7,500; the judges of the circuit courts, \$6,000 each; the United States district attorney, \$5,000; the United States marshal, \$4,000; and the governor shall receive annually, in addition to his salary, the sum of \$1,000 for stationery, postage, and incidentals; also his traveling expenses while absent from the capital on official business, and the sum of \$3,000 annually for his private secretary."

Sec. 6. That the said act as amended, be and hereby is, amended by adding a new section thereto, to be known as section 103a, and to read as follows:

"Sec. 103a. No person shall be employed as a mechanic or laborer upon any public work carried on in the Territory of Hawaii by the Government of the United States of America, or any department thereof, whether the work is done by contract or otherwise, unless such person is a citizen of the United States or eligible to become a citizen."

Mr. KALANIANA'OLE. I would ask Mr. Wise to have the maps of these lands shown to the committee, so they would have some idea about them.

The CHAIRMAN. I would like to have Senator Wise prepare maps of the different lands that he wishes set aside. How many islands are there—five?

Mr. WISE. Five islands.

The CHAIRMAN. Will you provide those maps?

Mr. WISE. Yes, sir.

The CHAIRMAN. Showing the lands that you wish set aside and the character of the land.

Now, I would like to have Senator Wise make a supplementary statement with reference to what is being done with these lands at the present time that he wishes set to one side for the rehabilitation of the Hawaiian race. Are they all under private ownership or leased; if leased, to whom and for what period, when will the leases expire, and any reason why they should be re-leased to the people at present occupying them; are they occupied by Hawaiians, or by whom?

Mr. WISE. I am ready to make that now.

The CHAIRMAN. Proceed, please.

#### STATEMENT OF HON. JOHN H. WISE—Resumed.

Mr. WISE. The first piece of land is Kamaoa-Puueo, on the island of Hawaii, in the district of Kau, 11,140 acres, leased to the Waiohinu Agricultural and Grazing Co. The lease is for 21 years and expires May 21, 1929. It contains a withdrawal clause.

Gov. McCARTHY. What is the annual rental?

Mr. WISE. \$200.

Mr. MONAHAN. How many head of stock can you carry on that, Senator?

Mr. WISE. I do not know how many head of stock you could run independent of other lands.

The CHAIRMAN. How much have they in that ranch?

Mr. WISE. This ranch, I should say, is running something like 5,000 to 6,000 head, and they have all these lands here. [Indicating.] They have leased other pieces, several other pieces, and own some lands in fee.

The CHAIRMAN. Amounting to how much?

Mr. WISE. There is another piece leased to them of 2,060 acres for 21 years. The lease is for \$55. There is another piece of Waiohinu, 15,000 acres, leased to the Hutchinson sugar plantation. The ranch lands are under the sugar plantation. That lease expired in 1914. Portions of that are in ranch and portions in sugar cane. They have a piece in Kona, I think; I am not certain, however.

Gov. McCARTHY. What is the annual rental?

Mr. WISE. Annual rental is \$600 for Waiohinu.

Within the Hutchinson sugar plantation they have another 11,000 acres. The rental is \$75 a year.

There is another piece of 2,206 acres leased to the sugar plantation company, which lease expired in 1918.

The CHAIRMAN. I do not think you have the idea yet. We do not care what is leased to the sugar plantations or what is leased to others. You say you have how many acres?

Mr. WISE. Eleven thousand one hundred acres.

The CHAIRMAN. Who has leased it?

Mr. WISE. The Government leased it to the Waiohinu Agricultural Co.

The CHAIRMAN. How much land have they got—the Waiohinu Agricultural Co.—how much more land besides this 15,000 acres?

Mr. WISE. I told you a while ago.

The CHAIRMAN. Yes; but you have sugar plantations and other things that have nothing to do with the land for homesteading.

Mr. WISE. If you will bear with me one moment, the Hutchinson Sugar Plantation Co. has a ranch on one side and a plantation on the other.

The CHAIRMAN. Then you should say that. The committee did not know.

Mr. WISE. I thought I did state that.

Mr. IRWIN. That is a subsidiary of the sugar company.

The CHAIRMAN. All right. Then there would be no injustice to anyone at the expiration of this lease to take this 11,000 acres for the purpose you want?

Mr. WISE. I do not think there would.

The CHAIRMAN. The next piece of land is what?

Mr. WISE. Puukapu, leased to the Parker Ranch. Among other lands are 43,342 acres leased to the Parker Ranch; guardian, A. W. Carter; rental, \$793.

The CHAIRMAN. A year?

Mr. WISE. A year.

Mr. BROOKS. For how many acres?

Mr. WISE. Forty-three thousand three hundred and forty-two acres. I am taking 15,000 acres out of that, which has expired. It is rented again with the withdrawal clause.

The next is Kawaihae, 13,000 acres, which was leased to the Parker Ranch entirely, with a rental of \$1,050 a year.

The CHAIRMAN. Has that lease expired?

Mr. WISE. It expired in 1913.

The CHAIRMAN. And the land was re-leased with a withdrawal clause?

Mr. WISE. I think so. I think all these lands have the withdrawal clause.

Mr. MCCARTHY. Yes.

Mr. WISE. Pauahi, 750 acres, \$3.52 a year, to the Parker Ranch.

The CHAIRMAN. That is released with the withdrawal clause?

Mr. WISE. Yes.

The CHAIRMAN. Now than the next is——

Mr. WISE. Kamoku, leased to the Parker Ranch.

Mr. HUMPHREYS. What is the rental?

Mr. WISE. I do not know. I have no record of this lease.

Mr. HUMPHREYS. Nienie?

Mr. WISE. The Parker Ranch. Seventeen hundred and sixty-five dollars for Nienie and as to the other, it does not say. It is run in with several other lands.

Mr. LANKFORD. What is the acreage?

Mr. WISE. Seventy-three hundred and fifty acres has a rental of \$1,765.

Mr. IRWIN. It is in with other lands. Expires in 1928, September 8.

Mr. WISE. Those lands are leased to the Parker Ranch, and that ranch as I said holds over 400,000 acres of Government land and about that much in fee simple land in addition, and we are taking from the ranch that 53,000, 7,350, 5,000, and 13,750 acres.

The CHAIRMAN. This 53,000 acres of Humuula Mauka, is that leased to the Parker Ranch?

Mr. WISE. Yes; for a sheep station.

The CHAIRMAN. For how much?

Mr. WISE. \$8,150 a year.

The CHAIRMAN. When does that lease expire?

Mr. WISE. 1930.

The CHAIRMAN. 1930?

Mr. WISE. That has the withdrawal clause.

The CHAIRMAN. Would any injustice be done to the Parker Ranch by withdrawing that 53,000 acres now?

Mr. WISE. I do not think so.

The CHAIRMAN. When did they re-lease it?

Mr. WISE. The lease expired the last time in 1907.

The CHAIRMAN. In 1907 to run to when?

Mr. WISE. 1930.

Mr. WEAVER. What is the withdrawal clause? As I understand it 25 persons——

Mr. WISE. The withdrawal clause means that every lease from the Government going to every corporation or individual contains a clause that if at any time those lands are wanted for homestead, they can be withdrawn from that tract.

Mr. WEAVER. Now, the withdrawal clause is that 25 persons eligible to take out homesteads can ask for the withdrawal of the lands?

Gov. McCARTHY. If the Government also wants to cut up those lands.

Mr. WEAVER. You could not withdraw them except for that specific purpose. If the Government has the right that is a different proposition.

The CHAIRMAN. Has the Government the right to withdraw these lands?

Gov. McCARTHY. Not under the leases made prior to 1910. They must run out their full term.

The CHAIRMAN. Are there any leases made prior to 1910?

Gov. McCARTHY. Yes, sir.

Mr. ALMON. What is necessary to withdraw them?

Gov. McCARTHY. In the case of leases made after 1910 you simply give notice. That is part of the lease.

The CHAIRMAN. Have you a copy of the withdrawal act?

Gov. McCARTHY. That is in section 73 of the withdrawal act.

The CHAIRMAN. Put it in the record.

Gov. McCARTHY. It is in the bill.

Mr. IRWIN. In the other bill.

The CHAIRMAN. Now go on with the rest of it then I will come back to these other questions.

Mr. WISE. Kahikinui, 25,000 acres.

The CHAIRMAN. That is leased to whom?

Mr. WISE. That is leased to J. H. Raymond.

The CHAIRMAN. When was it leased and when does the lease expire?

Mr. WISE. The lease expired in 1902. Consequently there is no withdrawal clause in that.

The CHAIRMAN. No withdrawal clause?

Mr. WISE. No.

The CHAIRMAN. How long does that lease run?

Mr. WISE. 1923.

The CHAIRMAN. How much a year?

Mr. WISE. \$500.

The CHAIRMAN. What is it being used for at the present time?

Mr. WISE. As a cattle ranch.

The CHAIRMAN. The next proposition, the district of Kula, 6,000 acres.

Mr. WISE. That is leased, all of it in ranch. It does not give the date.

The CHAIRMAN. Is that subject to withdrawal?

Mr. WISE. It does not give it here.

The CHAIRMAN. You do not know whether it is or not?

Mr. WISE. No.

The CHAIRMAN. Do you know, Governor?

Gov. MCCARTHY. No; I do not.

Mr. IRWIN. That is largely the remnants of Government lands, some of which are under the old form of leases which will shortly expire and some under the new form of lease, which contains the withdrawal clause.

Mr. ALMON. Some of those 6,000 acres?

Mr. IRWIN. Yes.

The CHAIRMAN. Could that 6,000 acres be included in this bill without any injustice to anyone?

Mr. IRWIN. Why, I should say so.

The CHAIRMAN. All right. Now, then, the next is Palaaau.

Mr. WISE. The three, Palaaau, Kapaakea, and Kalamaula, contain 20,450 acres, leased to the American Sugar Co., Ltd.

The CHAIRMAN. Twenty thousand four hundred and fifty acres?

Mr. WISE. Yes; about 20,450 acres.

The CHAIRMAN. That is leased to whom?

Mr. WISE. To the American Sugar Co. (Ltd.).

The CHAIRMAN. Is that sugar land?

Mr. WISE. No; they tried sugar on it and failed.

Gov. MCCARTHY. They got salt water in their wells.

The CHAIRMAN. Is there a withdrawal clause in that lease?

Mr. WISE. Yes; one piece expired in 1918 and another piece will not expire until 1920, made in 1910.

The CHAIRMAN. Now, if it expired in 1910, is it subject to the withdrawal clause?

Gov. MCCARTHY. The new lease expires in 1920, this year.

The CHAIRMAN. So that is all subject to withdrawal?

Gov. MCCARTHY. Yes.

The CHAIRMAN. Without injury to anyone?

Gov. MCCARTHY. It all depends on the time of the year 1910 that was leased. If it was leased prior to May 10 it would not be subject to the withdrawal clause. But in any event, the lease expires this coming year.

Mr. WISE. In 1910 it was only a right of way to use that was given. They paid a dollar for it.

Mr. KALANIANA'OLE. What is the rental?

The CHAIRMAN. Is it not true that most of the leases on this land have expired and that the lands were occupied on sufferance?

Mr. WISE. Yes.

They are getting a rental of \$1,600 on the first three pieces, and on 27,450 acres, \$1,200 a year.

The next piece is Hoolehua. They are getting \$440 for that. That expired in 1918.

The CHAIRMAN. The next?

Mr. WISE. Kamiloloa I and II and Makakupaia, 4,884 acres in all.

The CHAIRMAN. That is 5,800 acres, as I have it here.

Mr. WISE. That expired in 1919, May 14. They paid \$200.

The CHAIRMAN. It has not been re-leased?

Mr. WISE. Has not been re-leased.

The CHAIRMAN. Is it being used on sufferance?

Mr. WISE. Yes. All those lands are leased to the same company.

The CHAIRMAN. The next one?

Mr. WISE. Waimanalo, 6,835 acres, leased to the Waimanalo Sugar Co., 2,500 acres in sugar.

The CHAIRMAN. There are 4,000 acres that you want for pasture lands and the other is sugar lands?

Mr. WISE. Yes, sir.

The CHAIRMAN. The next one, Waimea.

Mr. WISE. Waimea. Outside the sugar lands.

Gov. MCCARTHY. That is included in the 57,000 acres that is leased at \$4,000 a year. The lease expires June 1, 1920, and they have been given an extension of one year to take off the crops on the cultivated area. The rest is pasture lands.

The CHAIRMAN. It does not affect the pasture lands?

Gov. MCCARTHY. Yes; it is the pasture lands that he has taken out.

The CHAIRMAN. The 15,000 acres is the pasture lands?

Gov. MCCARTHY. Yes.

The CHAIRMAN. That is available for homesteading on the first of June this year?

Gov. MCCARTHY. No; their lease was extended for a year.

Mr. IRWIN. Only the agricultural land.

Gov. MCCARTHY. Then this pasture land would be available this year.

The CHAIRMAN. The next piece of land?

Mr. WISE. There is nothing here on the record concerning Moloaa.

Gov. MCCARTHY. I think that was Hui land.

Mr. IRWIN. Some Government and some Hui land.

The CHAIRMAN. Five thousand acres was Government land?

Mr. WISE. Yes.

The CHAIRMAN. And the next, Anahola, is Government land?

Mr. WISE. Yes.

The CHAIRMAN. To whom are they leased?

Mr. WISE. They are leased to the Makee Sugar Co.

The CHAIRMAN. Are they sugar lands?

Mr. WISE. No, pasture lands.

The CHAIRMAN. Is it necessary for the sugar company to have these lands as pasture lands in connection with their sugar plantations?

Mr. WISE. I think not. They have other lands in fee. This portion is very small compared with the others.

The CHAIRMAN. They have lands of their own for that purpose at other places?

Mr. WISE. Yes.

Mr. KALANIANA'OLE. I would like to ask the Governor that question.

Gov. McCARTHY. I am not familiar with this piece of land but I know that each of the plantations maintains a large number of mules for agricultural purposes, and they certainly must require some pasture lands for those mules.

The CHAIRMAN. Is there anyone that wishes to ask the Senator any questions with reference to this bill that is under consideration right now? If not we will take up the other bill, or both bills together, and hear from the attorney general, Mr. Irwin. I would like to wind up the hearings to-night if I can. Are there any questions you would like to ask on these bills?

Mr. HUMPHREYS. I would like then if I may to ask this question: On the second page, at the bottom of the page, there is a provision there, "that as the demand and the necessity for the same shall arise, the commission shall, from time to time, select other public lands," etc. I would like to ask you if in your opinion it would not be better to say, "That as the demand and the necessity for the same shall arise, the Legislature of the Territory of Hawaii shall, from time to time, select other public lands."

Mr. WISE. The legislature instead of the commission?

Mr. HUMPHREYS. Yes.

Mr. WISE. That would be all right.

Mr. HUMPHREYS. Would it not be better?

Mr. WISE. It is a question of opinion, that is all.

Mr. HUMPHREYS. It is a big power to give to a commission to pick out other lands. Under the terms of this bill they would be the judges of the necessity. It occurs to me that that is a matter that ought to be passed on by the Territory of Hawaii.

Mr. WISE. That would be all right.

Mr. HUMPHREYS. That is the only question I wanted to ask.

The CHAIRMAN. Are there any other questions to be asked?

Mr. SHINGLE. The amount of the loan is not suggested in the bill. It provides that the Hawaiian Home Commission shall make loans, but it does not state the amount. We spoke in our hearings of making it about the same as the Hawaiian farm-loan act, which is \$3,000.

Mr. WISE. I noticed that, too. I called the attention of the attorney general to it and he said he thought the commission in their rules and regulations would fix the amount of the loans.

The CHAIRMAN. According to the land occupied?

Mr. WISE. Yes.

Mr. DOWELL. Are you providing for the return of this money to the commission?

Mr. IRWIN. Yes.

Mr. DOWELL. With a certain interest to be charged?

Mr. WISE. Not more than 6 per cent.

Mr. HUMPHREYS. You are making these leases run 999 years?

Mr. WISE. Yes.

Mr. HUMPHREYS. Is there any special reason for doing that?

Mr. WISE. The special reason in my mind was the nature of the resolution that I introduced in the Senate which called for title remaining in the Government.

Mr. HUMPHREYS. Nine hundred and ninety-nine years?

Mr. WISE. It did not say, but said that the title should remain in the Government always. It is in the resolution, and I did not want

to inject something new other than what I requested before the legislature and put through.

The CHAIRMAN. You might as well make it government-owned lands forever, or else provide that title shall pass from the Government to the homesteader in a certain number of years. The 999-year proposition is just the same as saying that it is perpetual.

Mr. WISE. It is up to the committee.

The CHAIRMAN. I think perhaps that we will have to consider that. One of the most important things for the committee to consider is the constitutional authority of Congress to enact this legislation, and at the request of the committee, as suggested by Mr. Humphreys and myself, the attorney general and others have prepared a brief on the constitutionality of these bills, and if no other member of the committee wishes to ask Senator Wise any questions, I would like to hear from Attorney General Irwin, who will present his brief and then we can ask him some questions.

Mr. HUMPHREYS. Before we get to that, there is another bill here, if you want us to consider that.

I would like to ask a question about this other bill.

The CHAIRMAN. All right, we will take up the other bill.

Mr. HUMPHREYS. The reason of the question is that I would like in all of these matters to leave as much discretion with the Legislature of Hawaii as we possibly can. It is their land and it is their money and they have got to pay the taxes, etc. Now the first division in this bill undertakes to fix the salaries of members in the legislature. It has occurred to me that it is the part of wisdom to say that the members of the legislature shall receive for their salaries "such compensation as may be fixed by the legislature of the Territory, not to exceed \$1,000, in addition to mileage," etc., and let the legislature determine whether they want to pay the members the \$1,000.

If we give them authority to fix it at anything they want up to \$1,000, it occurs to me that it would be much better than it is to do that ourselves. Then it would be their responsibility and not ours. We authorize the legislature to fix it. They have to pay it.

Mr. IRWIN. The United States Government pays part of it.

Mr. DOWELL. What part does it pay?

Gov. MCCARTHY. \$30,000 toward the expenses of running the legislature. That is, \$30,000 that we receive from Congress.

Mr. DOWELL. A lump sum?

Mr. HUMPHREYS. If we did not have to pay that, there would be no jurisdiction over their salaries.

Gov. MCCARTHY. We have to produce vouchers. The secretary of the Territory has to produce vouchers. We had a case some time ago—this is kind of explaining this thing, but it is getting off the subject. But it is like this: From the time of the organization of the Territory, the Territory out of its appropriation paid the expenses of printing the session laws. Now they sell those session laws. In 1915 and in 1917 it seemed as if the Territorial appropriation was a little bit short, and they were very long on the Federal appropriation, so they drew part of the cost of printing these laws from the Federal appropriation instead of from the Territorial. Now, the receipt from the sale of the laws went into the Territorial treasury, and when the auditor of the United States came down he said, "Here, you have paid for part of the printing of these laws from the Federal funds, and



the Territory is taking the receipts from the sale of the books. We want you to give us back every dollar that you received from the sale of these books." They were selling books every day, and they finally figured out the amount that we had gotten from the United States appropriation in these two years, and this last legislature appropriated that amount and we are paying that back to Uncle Sam so that the receipts from the sale of books will belong to the Territorial government.

There is constant friction over the spending of this \$30,000. It may be that the Committee on Accounts of either House has a bill for stationery, printing, or whatever it may be, and they will say, "Go ahead; just take it out of the territorial fund." Then at the wind-up of the session they have a big balance in Uncle Sam's account and their own account is exhausted. And some of the accounts that they try to charge to Uncle Sam are not according to the act of Congress appropriating this money, but they are busted and they have got to do it. In the meantime they have spent a lot of their own money, paid out their own money, which really could have been charged to the account of Uncle Sam.

Mr. ALMON. They can draw against that in the future.

Gov. McCARTHY. The auditor will guard against that.

The CHAIRMAN. How many senators are there and how many representatives?

Gov. McCARTHY. Fifteen senators and 30 representatives.

The CHAIRMAN. \$45,000, at a thousand dollars apiece?

Gov. McCARTHY. Yes.

Mr. SHINGLE. We get \$600 for the regular session and no pay for an extra session. \$200 is paid for a special session.

Gov. McCARTHY. Yes.

Mr. SHINGLE. So that the legislature, if it does not complete its labors in the 60 days' session and the governor has to call an extra session, the members serve without pay?

Gov. McCARTHY. The reason for that is this: In the 1901, 1903, and 1905 sessions the members refused to pass the appropriation bill in the regular session, making it compulsory on the governor to call a special session, so that for six days they would get this \$200. So finally, in 1906, Congress passed this appropriation giving us this \$30,000 on condition that nothing should be paid for the extra session. I was a member of the senate in 1907, which was the first regular session in which the general legislative appropriation bill was passed. And we did that in order to get this \$30,000.

The CHAIRMAN. How would it do to accept Mr. Humphreys's suggestion?

Gov. McCARTHY. It would be perfectly satisfactory.

The CHAIRMAN. Not that we are indicating what we will do with these bills when we get in executive session, but suppose we would accept Mr. Humphreys's suggestion with reference to authorizing the Legislature of Hawaii to fix the salaries?

Gov. McCARTHY. Not above a certain amount.

The CHAIRMAN. And until it is changed it is \$1,000.

Gov. McCARTHY. I do not get the last part of that.

The CHAIRMAN. We would approve the pay of \$1,000 a session until changed by the legislature, but under no circumstances should it be more than \$1,000 a session.

Gov. McCARTHY. That would be all right.

The CHAIRMAN. That would be complying with the request of your legislature asking Congress to raise that to \$1,000, but would also authorize the legislature at any future time to reduce it below that.

Gov. McCARTHY. They will never reduce it.

Mr. HUMPHREYS. I think we ought to just pass the buck to the Legislature of Hawaii.

Gov. McCARTHY. I think so.

Mr. HUMPHREYS. Not approve or disapprove it, but authorize them to fix their salaries, provided they do not exceed \$1,000.

Mr. WISE. It puts us back another two years, that is all.

The CHAIRMAN. Have you got the governor's salary in here?

Gov. McCARTHY. It is in another section.

The CHAIRMAN. That must be fixed by Congress.

Mr. HUMPHREYS. Congress does that, does it?

Gov. McCARTHY. Yes; appropriates the money.

The CHAIRMAN. On page 15 you have the salaries. You have got in here a proposition with reference to officials of the Territory appointed by the President, the qualification that they shall be citizens of the said Territory. Now, is that satisfactory?

Gov. McCARTHY. That is along the line of this home rule. Instead of having carpetbaggers dropped on us we feel that the Federal offices should be held by people who are citizens of the Territory of Hawaii.

The CHAIRMAN. You would be satisfied then if they were citizens of the Territory without any particular length of residence?

Mr. IRWIN. The statute provides one year's residence as a qualification for citizenship.

The CHAIRMAN. I know. Nearly every State requires a year's residence, 90 days in the county, and 30 days in the precinct; but a year's residence in the Territory would qualify a man to appointment to any of the positions down there. Is that satisfactory?

Mr. IRWIN. It is to me.

Mr. HUMPHREYS. There is this difference between that and the States. A man goes into a State and becomes a citizen in a year, or whatever it may be—I think in no State is it longer than two years—but it is up to the people of the State to elect him. A man will move over to New York and obtain a residence in six months, I think it is. He becomes a citizen of the State and therefore eligible to be elected governor. But he has to submit the question to a vote of the people whether they are willing to elect a man who has only been there six months or a year. Of course they are not going to do that. Now in Hawaii the people have no voice in it. Do you not think that that being true the governor ought to be required under the law to live in Hawaii a greater length of time than that?

Gov. McCARTHY. I think as far as the governor is concerned that he should be conversant with Hawaiian affairs, and he would have to be a pretty smart man to become conversant with affairs in Hawaii in a single year.

Mr. RAWLINS. The constitution of the Republic of Hawaii required that no man should be governor unless he had been a resident of Hawaii for 15 years.

The CHAIRMAN. Do you not think he should be a citizen of the Territory and to have resided there two years before that?

Mr. HUMPHREYS. I should put it at five. A man to be governor of Hawaii ought to have been there five years.

Mr. DOWELL. I should think the conditions should be that all the federal officers should be actual residents of the island for five years.

Gov. McCARTHY. Mr. Rivenburgh has just suggested to me on the side that such officials as the collector of customs, for instance, would not necessarily have to be there five years. I think the judges ought to be there five years.

Mr. WEAVER. The federal judges?

Gov. McCARTHY. All the judges. With the federal judges it is not so necessary, but the circuit judges or the judges of the supreme court ought to have been there at least five years.

The CHAIRMAN. That is a rather long time, five years.

Gov. McCARTHY. What we have suggested here is just what our legislature has asked us.

The CHAIRMAN. The only residence required in the District of Columbia is three years, and for some officials they do not require that.

Mr. SHINGLE. May I make a statement on that point?

The CHAIRMAN. Yes.

Mr. SHINGLE. The home-rule question has been carefully considered in the islands by both Republican and Democratic parties. Our delegates to the respective national conventions have always succeeded in getting a plank inserted in the national platforms pledging "home rule" for Hawaii. Under the present Wilson administration we have not had home rule except in the appointment of our governor. The Secretary of the Interior, Mr. Lane, has lived up faithfully to this policy and has picked his governors from Hawaii. On the other hand, men who have resided in the Territory barely more than a year have been chosen for the highest judicial positions.

Now, I do not wish to convey the impression that there is anything personal against these gentlemen. I simply desire to make a plea for home rule. I would like to see the committee adopt the suggestion that has been advanced by Mr. Humphreys and seconded by Mr. Dowell, requiring a five-year residence. I know we have people there in both parties that are fully capable of filling any of the offices within the gift of the President of the United States.

Mr. ALMON. They have been there five years or longer?

Mr. SHINGLE. Yes.

Mr. DOWELL. I will join with you on that.

The CHAIRMAN. I think five years is a little too long.

Mr. IRWIN. That is the danger.

Mr. ALMON. What is the danger?

Mr. IRWIN. You can not get it through Congress; that is the danger.

Mr. HUMPHREYS. It would not defeat the bill. They would amend it.

Mr. IRWIN. It would shut out these people coming to the district attorney's office and earning a livelihood as Federal officials while they are waiting to establish a residence. If we could stop that, then these people would not come down there.

The CHAIRMAN. I do not think we ought to increase the residence qualifications beyond that of the District of Columbia, and that is three years, and as to the schools and certain scientific departments there should be no residence qualifications required.

Mr. HUMPHREYS. There ought not to be, because it ought not to be in Hawaii or any State that you can not get a great educator from some other State. That is true in all other States.

Mr. RAWLINS. Following out what Senator Shingle just said to this committee, I would like to say a few words. It is the point testified to by Mr. Shingle that men have come to Hawaii and after one year in the United States district attorney's office—I was in that office several years myself, and I can say that men have come from the mainland and gone into the United States district attorney's office acting as assistant to the district attorney for one year, and than have been elevated to the circuit bench and presided over courts or matters involving large estates, and they had not had knowledge of Hawaiian affairs to try them. In one of these instances one of these gentlemen was elevated to the supreme bench. I have nothing against him personally, in fact he is a friend of mine.

But it seems to me that the three years suggested by the chairman is sufficient. A man, if he is in the district attorney's office for three years, will have an opportunity to learn something on the outside as to what the Hawaiian law is. Our supreme court was established years ago, before many of the State supreme courts were established. We have judicial decisions running from 1846 down to the present time, but a man in three years would be able to familiarize himself with these decisions.

Senator Shingle calls my attention to the fact that we have an appeal from our supreme court to the ninth circuit, where we had one up to five or six years ago to the Supreme Court of the United States, where there was a constitutional question or more than \$5,000 involved. Now it goes to the circuit court of appeals in San Francisco.

The CHAIRMAN. That gets quicker action?

Mr. RAWLINS. But it does not give us the benefit of the learning of the large number of justices. There are only three in the circuit court of appeals.

The CHAIRMAN. The United States judges of California are equal to any of the judges of the supreme court bench. [Laughter.]

Mr. ALMON. Except Alabama.

Mr. RAWLINS. I think three years suggested by you would be more than sufficient residence in the Territory.

Mr. HUMPHREYS. Would that be long enough for the governor?

Mr. IRWIN. I think, perhaps, an exception might be made in the case of the governor and extended to five years at least.

Mr. DOWELL. You have men down there who are equipped for the supreme bench?

Mr. RAWLINS. Yes; there is no question about that.

Mr. DOWELL. After three years he will still have a right to be appointed to the supreme bench.

Mr. IRWIN. We had a provision in here which provides that the Attorney General of the United States and the judges of the United States district court shall not appoint to any of these offices any persons except citizens of Hawaii. That takes care of that.

Mr. DOWELL. But if he lived down there—

Mr. IRWIN. He can be appointed under this bill.

Mr. DOWELL. He goes and stays his three years and he is then a citizen?

Mr. IRWIN. But he can not be appointed to that office unless he is a citizen.

Mr. DOWELL. He will be after three years.

Mr. IRWIN. He will not go down there and do nothing for three years. Under this bill he can not be appointed.

Mr. RAWLINS. There is a vacancy in the United States district attorney's office, and some appointee from the mainland is sent there. He receives a salary of \$2,500. He is there for 365 days and on the 366th day his name is sent to the Senate for confirmation. Under the provisions we propose he could not be appointed to the district attorney's office until after he had been a resident for three years. He has got to keep himself to work and to make his own living.

Mr. DOWELL. You think it would be worth something if he had to earn his money for three years?

Mr. RAWLINS. If he can hold out for three years and fight with the rest of them, he will be competent to hold office.

The CHAIRMAN. I have not been able to find in this bill any residence qualifications for the governor.

Gov. McCARTHY. It is not in this bill, but it is in another section.

The CHAIRMAN. Where?

Gov. McCARTHY. Of the organic act. That particular section of the organic act providing for the qualifications of the governor, that section not being amended, of course, is not in this act.

The CHAIRMAN. What section of the organic act provides qualifications for the governor of Hawaii?

Gov. McCARTHY. Section 66, which is as follows [reading]:

SEC. 66. That the executive power of the government of the Territory of Hawaii shall be vested in a governor, who shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and shall hold office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President. He shall be not less than thirty-five years of age; shall be a citizen of the Territory of Hawaii; shall be commander in chief of the militia thereof; may grant pardons or reprieves for offenses against the laws of the said Territory and reprieves for offenses against the laws of the United States until the decision of the President is made known thereon.

The CHAIRMAN. You desire to make a residence qualification of two years longer for the clerk of the court than for the governor of Hawaii?

Gov. McCARTHY. That is not our desire, Mr. Chairman, but the desire of our bill, which says that all of these people shall be citizens of the Territory of Hawaii.

The CHAIRMAN. Do you not think that if the bill that we report out should require three years' residence for the clerk of the court it ought to require at least three years for the governor?

Gov. McCARTHY. Surely. Simply add this section to our bill as you want to amend it. But as we did not ask for that in preparing the bill, we did not bring this section into the bill at all. But if you are going to increase the residence of any of these other officials, you should do the same thing with the governor, and the amendment should be inserted.

The CHAIRMAN. What is the contingent fund of the governor of Hawaii?

Gov. McCARTHY. The contingent fund of the governor of Hawaii is appropriated by the Legislature of Hawaii. There is no contingent fund allowed the governor of Hawaii under the organic act.

Mr. ALMON. It is usually about how much?

Gov. McCARTHY. The contingent fund of the governor?

Mr. ALMON. Per annum.

Gov. McCARTHY. It is generally \$50,000 for the two years. Now, that contingent fund has a string to it. This is really local.

The CHAIRMAN. What if we should increase the salary of the governor?

Gov. McCARTHY. It has nothing to do with the governor's salary whatever. For instance, in the department of public works there has been an appropriation made by the legislature for the expense of that department for two years, and just a couple of months before the beginning of the new term that department advised that this appropriation was going to run short, and they wrote a letter to the governor and the governor allotted them funds from his contingent fund sufficient to carry the department on for the balance of the term.

The CHAIRMAN. What personal expenses of the governor are paid out of the contingent fund?

Gov. McCARTHY. Not a dollar.

The CHAIRMAN. What governmental expenses of the governor are paid out of the contingent fund?

Gov. McCARTHY. I will read the portion of the act, and that will give you a better idea of just what it means. [Reading:]

Contingent fund, from which expenditures may be made only with the approval of the governor and only for urgent needs for which no specific appropriation or an insufficient appropriation is made, or otherwise, a detailed account of all of which expenditures shall be submitted to the next legislature: *Provided, however, That no expenditure shall be made out of this fund to increase any salary.*

Now, in this appropriation bill the different departments are provided for. Now, for instance, a year ago December—

The CHAIRMAN. Maybe we can get at this more quickly if you will let me ask you questions. Who pays for your postage stamps, stationery, etc.?

Gov. McCARTHY. That is expense of the governor's and secretary's offices.

The CHAIRMAN. That is supposed to be contingent fund?

Gov. McCARTHY. We do not call it that.

The CHAIRMAN. What is that fund?

Gov. McCARTHY. Expense of governor's office, \$4,000 for two years.

The CHAIRMAN. Your secretary?

Gov. McCARTHY. No; not my private secretary, but the secretary of the Territory, who is lieutenant governor. That takes in all of our stationery, postage, and any expenditures connected with the office.

The CHAIRMAN. Would that fund cover entertainments?

Gov. McCARTHY. The governor has an entertainment fund.

The CHAIRMAN. How much is that?

Gov. McCARTHY. \$5,000 for two years.

The CHAIRMAN. That is the entertainment fund?

Gov. McCARTHY. Yes.

The CHAIRMAN. You can use that all in one year if you want to?

Gov. McCARTHY. I can use it at any time.

The CHAIRMAN. Now, if the Secretary of the Interior or the Secretary of War or the Secretary of the Navy should telegraph you that a certain foreign delegation or man-of-war or general or official was

going to be at Honolulu on such a time and should ask you to entertain him, would you pay for that?

Gov. McCARTHY. I would pay for that out of that appropriation. I could pay out of that appropriation anything that I could produce a voucher for; but with all these things there are many things that I can not produce a voucher for, and I have to pay out of my own pocket; but wherever I can produce a voucher for a thing which will satisfy the auditor of the Territory, it can be paid from that fund.

The CHAIRMAN. Will they let you pay for a cigar?

Gov. McCARTHY. Yes, sir.

The CHAIRMAN. Or for entertainment now that prohibition has gone into effect?

Gov. McCARTHY. I can not go that far.

The CHAIRMAN. Do they let you pay for getting up a reception or an excursion?

Gov. McCARTHY. Well, everything that I can get a voucher for in the matter of entertainment I can get paid for from this fund, so long as there is any money in this fund.

In this connection I might say that I was confirmed as governor on the 6th of May. On the 14th of May, in 1918, the legislature was in special session. About that time Mr. Lane cabled that he was coming down to attend my inauguration. At the same time I received from the State Department, which believed that I had assumed office, a cable telling me that the Prince of Connaught was passing through there on a certain date. The legislature, being in special session, wished to know if there was sufficient money in the entertainment fund to pay the expenses of entertaining these gentlemen. I found that there was \$3,300 out of the \$5,000, and 13 months more to run. I said that that would be enough, that I did not want to put on style, and that would be all right. I let the legislature adjourn without asking for any increased amount, and when I came in office the next June there was \$1.02 to last a year, until the legislature met the following year, and every bit of entertainment was paid out of my pocket.

Mr. HUMPHREYS. That money was spent by your predecessor?

Gov. McCARTHY. I am not criticizing it.

Mr. HUMPHREYS. I understand that.

Gov. McCARTHY. Take, for instance, the visit of the Prince of Connaught; for hiring automobiles and providing a luncheon it cost about \$1,200.

The CHAIRMAN. If the Secretary of State knew that the prince was coming and wanted to entertain him, why should not the Secretary of State pay for it?

Gov. McCARTHY. That is for the Congress to appropriate money for the Secretary of State.

The CHAIRMAN. The Secretary of State, the Secretary of the Navy, and the Secretary of War all have money, and all they have to do is to pay it, and it is not fair to you, for a salaried man on \$7,000 a year, to ask you out of your private funds to provide these entertainments for these people that are going through there. When the Secretary of State telegraphs you that the Duke of Connaught is coming, he ought to pay for his entertainment. He ought to make good to you. He has the money, and he ought to pay, and you ought not to go into your private funds or your salary to pay.

Neither should the Secretary of the Navy, Secretary of War, or Secretary of the Interior. We give them all the money they ask for their expenses and for their contingent fund. If they want it they ask for it, and we give it, and it is not fair for them to telegraph to you to give these entertainments and leave you high and dry. It is not right and fair.

Mr. SHINGLE. As I understand, the governor of Hawaii is the commander in chief of the Army and Navy, representing the President of the United States. We were annexed before the time of the cable, and Congress at that time had to provide for some one to represent the President of the United States, so it was provided in the organic act that the governor should be the commander in chief of both the Army and the Navy.

Gov. McCARTHY. Section 60 covers this.

Mr. SHINGLE. That means that the governor must entertain a great many of the Army and Navy officers there. A military division will soon be established on Oahu, with department headquarters. There is now a naval station, and larger naval forces will follow. The governor is obliged to give many formal and informal entertainments, not only the Military and Navy, but also for many distinguished people passing through Honolulu.

The CHAIRMAN. We give the President of the United States a contingent fund and an entertainment fund. Whatever he wants he gets, and if the Governor of Hawaii and the Governor of Alaska represent the President of the United States, the President of the United States ought to go into that contingent fund and entertainment fund or personal fund that he has and can draw on, and he does not have to make any report of what he spends.

Mr. HUMPHREYS. Does the governor have a house furnished him?

Gov. McCARTHY. No; the governor pays his own rent. I might say in this connection, so that there may not be any misunderstanding, that the last legislature passed an act providing for the purchase of the former residence of Queen Liliuokalani as an executive mansion. The trustees of the Liliuokalani estate agreed to sell it for a certain amount, but there was a string to it in this respect, that the queen in her will devised that their adopted son and his family could occupy this place as a residence as long as they lived. The young man died, but he left a wife and some children. The children have a guardian. The appraisers set the value of the equity of those children at \$10,000. The bill was passed nearly a year ago, but the Territory has been unable to come to terms with the guardian. But I made a lease personally of the property, but the lease has expired, and I am there in the house as a tenant at will, and I am paying the rent out of my own pocket.

The CHAIRMAN. That is not fair, either. I notice that the term of the governor is four years, and that the term of the other Federal officers is six.

Gov. McCARTHY. They have tried to amend it to make it six.

Mr. IRWIN. It is six.

The CHAIRMAN. It is six?

Gov. McCARTHY. I did not know that. The term of all the Federal officers under the Government is six years?

Mr. IRWIN. Six years.

Gov. McCARTHY. How about the judges?



Mr. IRWIN. That is six years also.

Gov. McCARTHY. I did not know that.

Mr. BROOKS. Is the term of members of the house six years?

Mr. IRWIN. Only two years.

The CHAIRMAN. Now, if there is nothing else we will hear from the attorney general, who will present a brief about the constitutionality of the bill. Please give attention to this brief as it contains the legal points. This brief of the attorney general, showing the constitutional authority of the Congress to enact legislation asked for by the Territory of Hawaii, and I think we ought to give is strict attention.

# STATEMENT OF HON. HARRY IRWIN, ATTORNEY GENERAL OF HAWAII.

The CHAIRMAN. You may exercise your own judgment as to whether you want to read your brief or bring only certain parts of it to the attention of the committee, or refer to it in your statement.

Mr. IRWIN. I will not read the brief, but file it for the record.

(The brief referred to is as follows:)

FEBRUARY 9, 1920:

## THE CHAIRMAN AND MEMBERS OF THE COMMITTEE ON THE TERRITORIES, *House of Representatives, United States.*

GENTLEMEN: There is now pending before this committee a proposal to enact certain legislation whereby portions of the public lands of the Territory of Hawaii shall be set apart and devoted to the exclusive use of citizens of Hawaii and Hawaiian blood, in whole or in part. This proposition has the support and approval of the Legislature of the Territory of Hawaii, as shown by concurrent resolution No. 2, which was passed by both houses of the Territorial legislature during its 1919 session, and which has been incorporated in the record of these hearings. Senator John H. Wise, of Hawaii, the principal spokesman and advocate for this legislation, bases his argument in support of the proposed legislation on five grounds, namely:

1. That in the Great Mahele, or division of the lands of the Kingdom of Hawaii, which took place in 1847, the common people of Hawaii, who, at that time, constituted almost exclusively members of the Hawaiian race, did not receive their just share of the lands of the kingdom.

2. That those portions of the lands of the kingdom which, in the Mahele, were set apart as crown lands, were and are impressed with a trust in favor of the common people which has never been executed in their favor.

3. That at the time of the overthrow of the monarchy the crown lands were taken over by the Republic, and the rights of the citizens, as such *cestui que trustent*, confiscated.

4. That equitably, and as a measure of belated justice, the Hawaiian people are entitled for these reasons to preferential treatment in the further disposition of these lands; and

5. That in any event, whether the said equitable claim shall be considered as established or otherwise, the Congress of the United States should recognize the fact that because of conditions outlined by Senator Wise, the Hawaiian race is rapidly dying out, and that

legislation should be enacted for the special advantage of the Hawaiian people to the end that the remaining Hawaiian population may be induced to return to the land as tillers of the soil, thus removing them from the conditions which are tending to their destruction, and thus providing for the rehabilitation of the Hawaiian race.

This last proposal is based squarely upon the proposition that Congress should, so far as it constitutionally may do so, enact such legislation as will tend to stem the tide of destruction, which, unless checked, must inevitably, within a short time, result in the utter annihilation of this fine race of people.

These various propositions will be discussed in the order above indicated.

First. It may be conceded that the native Hawaiian population did not receive anything like a proper proportion of the public lands under the Great Mahele. The theory upon which these lands were divided, was that the shares of the King, the chiefs, and the people in the land of the Kingdom were about equal.

The board of land commissioners to quiet land titles, which was established for the purpose of settling these rights, decided that "There were but three classes of vested rights or original rights in the land which were in the King or Government, the chiefs and the people, and these three classes or rights were about equal in extent." (See President Dole's article in the *Overland Monthly*, of June, 1895.)

Theoretically, therefor, the common people were entitled to one-third of the land. This right, however, was absolutely dependent upon the presentation of these claims to the said board of land commissioners, and no matter how strong a claim of right a native Hawaiian or other citizen of the Kingdom of Hawaii may have had in a piece of land, unless that claim was presented to and allowed by the board of land commissioners he could not, after the board had completed its work, successfully assert title to the same.

In this connection the following rule was adopted by the board of land commissioners:

"All persons are required to file with the board by depositing with its secretary specifications of their claims to land and to adduce the evidence upon which they claim title to any land in the Hawaiian Islands, before the expiration of two (2) years from this date, or in default of so doing, they will after that time, be forever barred of all right to recover the same in the courts of justice." (*Fundamental Law of Hawaii*, p. 149.)

It is amazing that of the large area of land involved in the Mahele, and in which the common people undoubtedly had very extensive rights, that only 28,000 acres were awarded by the board to the common people of Hawaii, as distinguished from the King and the chiefs. This situation is undoubtedly due to the fact that large numbers of the native population failed to file their claims with the board of land commissioners. Just why they failed to file their claims, is at this date largely a matter of conjecture. It may be, as explained by Senator Wise, that the failure to do so was due in part to opposition on the part of the chiefs and landlords, and in part to a natural reluctance on their part to break away from the old feudal system which had prevailed in Hawaii for a period prior to the memory of any then living man. The fact remains, however,

that they failed to present their claims to the board with the legal effect that by operation of law they lost entirely any right that they theretofore had in those lands. As a matter of law, therefore, whatever the causes may have been leading up to this result, the real reason why the Hawaiians failed to obtain a larger portion of the public domain through the Mahele, was due to their failure to present their claims to the board of land commissioners within the time provided for by law.

Second, third, and fourth. These three propositions will be discussed together. The position taken by Senator Wise in this connection is that under the Great Mahele the lands that were set apart as Crown lands were impressed with a trust in favor of the common people, and that equitably they are still impressed with that trust, notwithstanding the various changes of Government, with their attendant changes in the disposition of these crown lands.

I do not believe that this proposition can be sustained either at law or in equity. The whole theory of the Great Mahele was based upon the idea that the public domain was to be divided between the king, the chiefs, and the people. It seems to me to be unnecessary at the present time to enter into an extended discussion of the evolution of Hawaiian land titles. The board of land commissioners, heretofore referred to, adopted certain rules which were subsequently approved by the king and chiefs in privy council.

With respect to the work of this commission and the general results of the Mahele, I quote the following excerpt from an article written by Sanford B. Dole, President of the Republic of Hawaii, and published in *Overland Monthly* in June, 1895:

"The principles adopted by the land commission use the words king and government interchangeably, and failed to reach any adjudication of the separate rights of the king in distinction from those of the government in the public domain, or, in other words, they failed to define the king's public or official interests in distinction from his private rights, although they fully recognized the distinction. There was, however, an implied apportionment of these two interests through the proceedings by which an occupying claimant obtained an allodial title. The commission decided that their authority coming from the king to award lands represented only his private interests in the lands claimed. Therefore, as the further payment by the claimant as a condition of his receiving a title in fee simple from the government was one-third of the original value of the land, it follows that the king's private interest was an undivided two-thirds, leaving an undivided one-third belonging to the government as such.

"The commission also decided that there were but three classes of vested or original rights in land, which were in the king or government, the chiefs, and the people, and these three classes of interest were about equal in extent.

"The land commission began its work on February 11, 1846, and made great progress in adjudicating claims of the common people, but its powers were not adequate to dispose of the still unsettled questions between the king, the chiefs, and the government, though it must be admitted that it made progress in that direction. Neither were the chiefs ready to submit their claims to its decision.

"After earnest efforts between the king and chiefs to reach a settlement of these questions, the rules already referred to were unani-

mously adopted by the king and chiefs in privy council, December 18, 1847. These rules, which were drawn up by Judge Lee, embodied the following points: The king should retain his private lands as his individual property, to descend to his heirs and successors; the remainder of the landed property to be divided equally between the government, the chiefs, and the common people.

"As the land was all held at this time by the king, the chiefs, and their tenants, this division involved the surrender by the chiefs of a third of their lands to the government, or a payment in lieu thereof in money, as had already been required of the tenant land-holders. A committee, of which Dr. Judd was chairman, was appointed to carry out the division authorized by the privy council, and the work was completed in 40 days. The division between the king and the chiefs was effected through partition deeds signed by both parties; the chiefs then went before the land commission and received awards for the lands thus partitioned off to them, and afterwards many of them commuted for the remaining one-third interest of the government by a surrender of a portion.

"After the division between the king and the chiefs was finished, he again divided the lands that had been surrendered to him between himself and the government, the former being known thereafter as Crown lands and the latter as government lands."

It is apparent from this statement that it was always considered that the lands reserved by the King were his individual property which would descend to his heirs and successors. The act of 1846, by which the cession of lands by the King to the government was approved by the Hawaiian Legislature, expressly refers to the Crown lands as "The private lands of His Majesty Kamehameha III, to have and to hold to himself, his heirs and successors forever, and said lands shall be regulated and disposed of according to his royal will and pleasure, subject only to the rights of tenants."

The same act enumerates the lands which were transferred to the government by the King as having been "made over to the chiefs and people by our sovereign lord, the King, and we do hereby declare these lands to be set apart as the lands of the Hawaiian Government, subject always to the rights of tenants."

Prior to an act of the Hawaiian Legislature of 1864, these Crown lands were alienable to the same extent as other privately owned lands (see Estate of Kamehameha IV, 2 H. 715). The preamble to that act declares that—

"Whereas by the act entitled 'An act relating to the lands of His Majesty and to the government, passed on the 7th day of June, A. D. 1848, it appears by the preamble that His Most Gracious Majesty Kamehameha III, the King, after reserving certain lands to himself as his own private property, did surrender and make over to his chiefs and people the greater portion of his royal domain; and

"Whereas by the same act it was declared that certain lands therein named shall be private lands of Kamehameha III, to have and to hold to himself, his heirs and successors forever, and that the said land shall be regulated and disposed of according to his royal will and subject only to the rights of tenants; and

"Whereas by the proper construction of the said statute the words 'heirs and successors' mean the heirs and successors to the royal office; and

"Whereas the history of said lands shows that they were vested in the King for the purpose of maintaining the royal state and dignity, and it is therefore disadvantageous to the public interest that the said land should be alienated or the said royal domain diminished; and

"Whereas, further, during the two late reigns the said royal domain has been greatly diminished and is now charged with mortgages to secure considerable sums of money. Now, therefore, *Be it enacted*," etc.

Nowhere, so far as I have been able to discover, is there any suggestion that these Crown lands were being held by the sovereign in trust for the common people. The history of land titles in Hawaii and the adjudicated cases all clearly show that up to the passage of the act of 1864, above referred to, the Crown lands were considered to be the private property of the sovereign, free from any trust whatever. After the passage of that act the King was still considered the owner of the Crown lands, subject to the condition that they were to be held by him for the maintenance of the royal family and state and for the benefit of the heirs and successors to the royal office. This latter condition existed up to the time of the revolution, the overthrow of the monarchy, and the establishment of the Republic of Hawaii.

Article 95 of the constitution of the Republic of Hawaii provided that "That portion of the public domain heretofore known as Crown land is hereby declared to be heretofore and now to be the property of Hawaiian Government and to be now free and clear from any trust of or concerning the same and from all claim of any nature whatsoever upon the rents, issues, and profits thereof. It shall be subject to alienation and other uses as may be provided by law. All valid leases now in existence are hereby confirmed."

This article of the constitution of the Republic definitely and legally fixed the status of what before that date had been known as Crown land, and that status has been definitely upheld by the Supreme Court of Hawaii in a case entitled "Territory v. Kapiolani Estate (18th H. 640)," where the court, on page 645, said:

"As above stated, it was unnecessary to aver the title of the Territory in that portion of the public lands which, at the date of the lease, were known as Crown lands, since judicial notice is taken that by article 95 of the constitution of the Republic of Hawaii the Crown lands were declared to be the property of the Hawaii Government and that by the public land act of 1895 those lands, as part of the public domain, were placed under the management of the Commissioner of Public Lands, a title which was recognized by the joint resolution of annexation, the lands having been ceded by the Republic of Hawaii to and accepted by the United States and also recognized by the organic act (sec. 83) in continuing in force the land laws of the Republic of Hawaii, and (sec. 99) declaring that the Crown lands on August 12, 1898, were, and prior thereto, had been the property of the Hawaiian Government. The validity of the declaration in the constitution of the Republic of Hawaii, under which the present title is derived, does not present a judicial question. Even assuming, but in no way admitting, that the constitutional declaration was confiscatory in its nature, this court has no authority to declare it to be invalid. The subsequent derivation of title by the United States as above stated, is clear."

There can be no doubt, therefore, that when these Crown lands were ceded to and accepted by the United States, they were ceded and accepted free and clear of any trust whatever. In my opinion, therefore, this proposed legislation can be sustained, if at all, not upon any theory that the Hawaiian people ever had any equitable right or title to these lands, but only upon the theory suggested in the fifth subdivision as hereinabove set forth, namely, for the purpose of rehabilitating a race of people who, through circumstances, perhaps beyond their control, are in danger of extermination.

In making the foregoing statement I am not to be understood as opposing the enactment of legislation in conformity with the spirit and intent of Senate concurrent resolution No. 2. If the legislation is to be enacted, I believe it should be enacted upon a sound basis of fact and law and not upon a theory which can not be sustained by the history and law of the Kingdom of Hawaii and its successors.

Fifth. I come now to the proposition which I believe to be one which merits the careful consideration of the committee and which I believe constitutes a sound and the only basis upon which legislation of this kind can be enacted. The proposition briefly stated, is that the Federal Government in the exercise of its plenary powers over the Territory of Hawaii, should by apt legislation set apart for the exclusive use of members of the Hawaiian race, certain portions of the public domain of Hawaii for the purpose of rehabilitating the race and preventing its ultimate extinction. It has been suggested by some and emphatically stated by others, that legislation of this kind may not be constitutionally enacted for the reason as suggested and stated that it would be class legislation, and therefore in violation of the Constitution of the United States. No particular article of the Constitution has been suggested as being prohibitive of this legislation, nor do I know of any such prohibitive provision of the Constitution.

The only provisions of the Constitution of the United States which could, by any construction, affect legislation of this kind, are section 2 of article 4 and section 1 of the fourteenth amendment. These sections are usually grouped in the textbooks under the title "Privileges and immunities and class legislation."

Section 2 of article 4 of the Constitution provides that, "The citizens of each State shall be entitled to all privileges and immunities of citizens of the several States." This provision, however, has no application to legislation by Congress affecting the Territories.

"The guaranty contained in the Constitution as originally adopted, protects only those persons who are citizens of one of the States in the Union. Thus, it does not apply to aliens or to citizens of the United States resident in an organized or unorganized territory of the United States." (12 C. J., 1109.)

This question was considered by the Supreme Court of California in *Estate of Johnson* (139 Calif., 532). In that case the inheritance tax law of the State, which imposed an additional tax upon certain nonresident heirs of the decedent was before the court for consideration. It was argued that the provision of the inheritance tax law in question was violative of section 2 of article 4 of the Constitution of the United States. The court said:

"Still further, as hereinafter will be shown, the decision in the *Mahoney* case rested upon illegal assumptions of both appellants and

respondent and was therefore invited error. The appellants' first contention was, as expressed by the commissioner in the Mahoney case, 'That legacies to nephews and nieces are exempt from the collateral inheritance tax, whether they reside in this State or not.' This contention was a claim that section 2 of article 4 of the Constitution of the United States secured not merely to citizens of other States the immunities and privileges granted by a State to its own citizens, but secured the same to aliens, to residents of Territories, and to citizens of the United States who are not citizens of any State, none of which classes come under the protecting shield of the Constitution (p. 535). The constitutional immunity goes only to citizens of sister States, and there is a clear distinction thus recognized between citizens of the States and citizens of the United States who are not citizens of any State, as well as citizens of alien States. By virtue of the Constitution of the United States the immunity which the legislature by the amendment of 1897 conferred upon the citizens of this State is extended to citizens of sister States, but the immunity goes no further.

Citizens of the Territories, of the District of Columbia, as well as aliens, are not exempted, and their property is thus liable for the tax (p. 539).

In the case at bar we have the expression of the legislative intent to confer a certain immunity upon citizens of the State. By force of the Constitution of the United States that immunity is extended to all citizens of sister States, leaving as liable to the burden of the tax the property of all other nephews and nieces, aliens and citizens of the United States, who are not citizens of any particular State" (p. 540).

In support of the text as quoted from 12 C. J. 1109, *supra*, this case directly holds that citizens of the United States, that is, residents of the territories organized and unorganized, who are not citizens of any State, are not protected by this clause of the Constitution.

"This provision does not affect the power of Congress to give the residents of territories privileges and immunities not accorded to nonresidents thereof." (12 C. J. 1109.)

In a case entitled "Coal and Improvement Co. v. McBride" (3 Ind. Territory 224), an act of Congress which provided that a law of the State of Arkansas relative to the recording of mortgages, should apply and be operative in the Indian Territory, was under consideration. Certain provisions of this law operated to the advantage of residents of the territory and to the disadvantage of nonresidents, and it was, therefore, claimed that the law in question was beyond the power of Congress as being in violation of section 2 of article 4 of the Constitution. The court in discussing this question, said:

"The clause of the Constitution of the United States referred to, reads as follows: 'The citizens of each State shall be entitled to all privileges and immunities of citizens in the different States (Sec. 2, Art. 4, Constitution of the U. S.). This was intended to secure to the citizens of every State within every other State, the privileges and immunities (whatever they might be) accorded in each to its own citizens. It is a limitation on the power of the States and in nowise affects the power of Congress, over the unorganized territories and the Indian reservation. It is doubtlessly true that the citizens of all the States must be accorded equal privileges and immunities

within those territories and reservations, but it does not necessarily follow that they are to have the same privileges and immunities as those residing here. There are no such limitations upon the power of Congress nowhere expressed in the Constitution. The inhabitants of a State have a dual citizenship, State and Federal. The article of the Constitution under consideration, guarantees to 'the citizens of each State' all privileges and immunities of citizens in the several States, but this interstate citizenship is only granted to citizens of a State and not to citizens of the United States. It is plain, therefore, that unless a law deprives the inhabitants of a territory of some property or of vested rights, or of personal liberty, without due process of law, Congress has plenary power of legislation over them." (pp. 228-229).

In my opinion it is clear from the language of this section and the adjudicated cases, that it does not limit the power of Congress to enact the legislation recommended by concurrent resolution No. 2.

That portion of section 1 of the fourteenth amendment, which is germane to the subject under consideration, reads as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

This is a limitation on the power of the States and in nowise limits the power of Congress. The language of this section is so clear on this point as to admit of no argument.

"This section of the Constitution operates only as a protection against State action." (12 C. J. 1111; *Robinson v. Fishback*, 175 Ind. 132; *Mulligan v. United States*, 120 Fed. 98; *Farrell v. United States*, 110 Fed. 942.)

After a consideration of the various principles involved, I am of the opinion that nothing in the Constitution of the United States prohibits Congress from enacting the legislation recommended by Senate Concurrent Resolution No. 2.

Respectfully submitted.

HARRY IRWIN,  
*Attorney General of Hawaii.*

Mr. IRWIN. The legislation which is urged by Mr. Wise upon the ground, first, that the common people of Hawaii have an equitable interest in the Crown lands of Hawaii for the reason that the Crown lands were set apart to the kings in trust for the common people.

Now, using the word "equity" from the standpoint of a lawyer, I have been unable to find any authority which supports Mr. Wise's contention. I have set forth in the brief which has been filed various acts of the Legislature of the Kingdom of Hawaii, various regulations of the land commission, and some decisions of the Supreme Court of the Territory of Hawaii, which all show clearly that the legal title to these lands originally vested in the king, for his own private use, free of any trust of any kind whatever; that subsequently his right in the Crown lands was curtailed to a certain extent. The legislature made them inalienable, and after that time they were held by the king as his private property, subject to the condition that they should descend to the successors to the royal office. They were supposed to be in the possession of the king for the maintenance of the royal estate and the royal office.

Mr. HUMPHREYS. May I ask a question?

Mr. IRWIN. Yes.



**Mr. HUMPHREYS.** Is the revenue from this land in lieu of taxes or in addition to taxes? The people have to pay taxes to support the Government?

**Mr. IRWIN.** Yes.

**Mr. HUMPHREYS.** The king did not have to pay the expenses of the Government out of his revenue from these lands?

**Mr. IRWIN.** He did not pay any expenses of the Government. The revenues from these lands were for his own private support and maintenance, as the act said, for the maintenance of the royal office, that is for his private maintenance and not for any public purpose whatever.

At the time of the establishment of the Republic, section 95 of the constitution of the Republic provided in terms that the Crown lands, the lands theretofore known as Crown lands, should be the property of the Republic of Hawaii free from any trust whatever, and that same expression was used in the treaty of annexation and in the organic act. The United States accepted these from the Republic of Hawaii free of any trust either in favor of the then royal family or any other person whatever. That question was passed upon by the Supreme Court of the United States in the case of the Commissioner of Public Lands *v.* Kapiolani Estate, Supreme Court of the Territory. That case is in volume 18 of the Hawaiian Reports, where the question was definitely settled that the legal title to the Crown lands is in the United States of America.

That, in my opinion, is a matter of secondary importance. I do not think that is the important fact in the case or the important subject under discussion. I think that the important thing, and the basis upon which the legislation should be enacted, if enacted at all, is the last ground urged by Senator Wise, namely, that because of the conditions which have been made apparent by Senator Wise that it is the duty of the United States Government to enact such legislation as will stem this tide of destruction that is setting in against the Hawaiian people.

In that connection, from the very inception of this proposition by Mr. Wise, there has been urged or stated rather indefinitely that such legislation could not be enacted by Congress for the reason that it is class legislation. I have yet to hear from any person, lawyer or laymen, any reference to any particular clause of the Constitution which in any way prohibits legislation of this kind. The only two possible clauses in the United States Constitution which could have any bearing upon this question are section 2 of the fourth article of the Constitution and section 1 of the fourteenth amendment. Those two clauses are usually grouped in the textbooks and in the encyclopedias under the head of "Privileges and immunities and class legislation."

The sections of the Constitution referred to are as follows:

*Art. IV, sec. 2.*—The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. \* \* \*

*Amendments —, Art. XIV, sec. 1.*—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

It is rather strange that the subject has not been discussed in the books to a greater extent than it has. There are a few cases which I have been able to run down under the rather inconvenient circumstances under which I have been working, which directly bear upon the question. Cooley on Constitutional Limitations does not discuss the precise question, and does not discuss the extent of the Federal legislative power over a Territory.

The rule is laid down very clearly and broadly in *Corpus Juris*, that the first provision mentioned, that is, the second section of the fourth article, has no relation whatever to nor does it constitute any prohibition whatever on the power of Congress to legislate with regard to Territories; that it is only a prohibition upon the Congress and upon State legislatures protecting the citizens of the different States, and the language of the section itself supports the conclusion, that it in no wise constitutes any prohibition or limitation upon the power of Congress to legislate with regard to Territories, either organized or unorganized, or over the District of Columbia or over the Indian reservations.

The immunity and privileges which are referred to in both of those sections of the Constitution are said to be the fundamental natural rights of the citizens and not rights which are given by statute. In a case decided in the State of California, a comparatively late case and a well-argued case, the question arose with regard to an inheritance tax of that State, where discrimination was made in favor of the citizens and against nonresidents of the State. The question was squarely before the Supreme Court of the State of California, which decided that this provision of the Constitution does not limit the power of Congress to legislate with regard to Territories, either organized or unorganized.

The same question was squarely before the Supreme Court of the Indian Territory, and that perhaps is a stronger case, for the reason that an act of Congress was directly under consideration. In that case an act of Congress provided that a certain law of the State of Arkansas relative to the recording of mortgages should be extended to and be the law of the Indian Territory. This law worked out to the advantage of residents of the Indian Territory and to the disadvantage of nonresidents of the Indian Territory, and it was urged that the law was unconstitutional, for the reason that it violated the second section of the fourth article. The question was squarely before the Supreme Court at that time, and the same principle was announced in that case as was announced in the case in California, that that provision of the Constitution constituted no limitation whatever upon the power of Congress to legislate with regard to Territories.

MR. DOWELL. What was the question involved in the California case that is stated. That was under a State law, was it?

MR. IRWIN. Yes.

MR. DOWELL. And you say the Arkansas case was under a Federal statute?

MR. IRWIN. Under a Federal statute; yes.

MR. DOWELL. Those are cited in your brief?

MR. IRWIN. Yes; cited at length in the brief, and the decision set out in the brief.

Those are the two cases nearest to the point, that Congress has the power to enact legislation of this kind for the reason that section 2

of article 4 constitutes no prohibition or limitation on the power of Congress to legislate for the Territories.

Now, the first section of the fourteenth amendment is so clearly worded that there can be no question on that, because it is directly a limitation upon the power of the States. It does not need any argument to show that that is true. I have cited some cases with the idea of nailing the thing down in the brief, but the wording of that section is so clear that it needs no argument whatever, because it is expressly limited to State legislation.

I do not know that I have anything further to say, as I have gone into the matter rather fully in the brief.

Mr. DOWELL. I am not familiar with the decisions here, but I want to get a little more definite information about the Arkansas case that you refer to. As I understand it, that was a question between the citizens of a State.

Mr. IRWIN. Citizens of a Territory.

Mr. DOWELL. Citizens of a Territory and a nonresident or a person who was not a citizen?

Mr. IRWIN. Yes.

Mr. DOWELL. But now, in the case before us, are we discriminating in this legislation between the citizens of the same Territory?

Mr. IRWIN. Yes.

Mr. DOWELL. And is there a distinction, now, in the case you have cited where the question involved was one between a citizen of a Territory and one who was not a citizen of the Territory, and in the case here you have two citizens of the same Territory? I am not familiar with the case, I know nothing about it, but as you have stated it, is there any application of that case to the question we have here?

Mr. IRWIN. I think controlling in this case decision. While the facts in both of the cases cited are slightly different from the case that you have presented with regard to this legislation, the Supreme Court of the State of California and the Supreme Court of the Indian Territory both clearly held that this provision of the Constitution had no reference whatever to the power of Congress to legislate regarding Territories. They lay down that broad principle.

Mr. DOWELL. I confess my ignorance of this opinion, but I should think the language of it, as you refer to it, is broad enough to cover the identical question that we have in this case.

Mr. IRWIN. I have no doubt about it.

The CHAIRMAN. I would like to ask just three questions, and I think that the whole thing may hinge on that proposition as to whether they have the right to legislate or not—probably not. Is there anything in this bill or in the bills presented to this Congress by the legislative delegation from Hawaii that is in violation of a contract or of a vested right?

Mr. IRWIN. Absolutely not, Mr. Chairman. No citizen has a vested right in any of the public lands of the Territory or of the State.

The CHAIRMAN. I was convinced of that, but I wanted you to say it. Congress does enact class legislation, a great deal of the legislation that has been enacted during the past few years has been class legislation. We have some class legislation before Congress now that we are going to enact. The legislation providing lands for the Indians, in making allotments of land to Indians in a State or

in a Territory, is class legislation, in the interests of the Indian, probably to the detriment of citizens.

Mr. DOWELL. But we have made the Indians wards of the Government.

The CHAIRMAN. Well, there are others that we have made wards of the Government, and there is a question whether we have made them wards of the Government except on the stump. I do not know whether there is anything in the statute that makes them wards of the Government. We have paid them money, have not done as much as we ought to have done, but we are legislating, and have legislated in the interests of the Civil War veterans so far as the public lands are concerned, have given them preference rights in homesteads, and the right to file on lands. We have given them scrip that other citizens could not get.

We have permitted them to live on public lands for a less length of time than you or I would have to live on them to secure title to the lands from the Government. And it is right that we did so.

Mr. ALMON. Mexican War veterans, too.

The CHAIRMAN. Mexican War veterans the same way. We gave some of the Mexican War veterans 640 acres of land, and there are claims of that kind at the present that have not been adjusted. We are considering the proposition of giving veterans of the World War preference rights to the public lands and we are considering the proposition of reclaiming and irrigating and cutting up into tracts for the public to occupy and to give a preference to one class of citizens against another class of citizens in the same State and in the same territory. Now, if we can do that—and those things have stood the test of the courts, have been declared to be constitutional—why can not we enact legislation that would give preference to the natives of the Hawaiian Islands against those who are not? We are all together on the proposition, but we want to get the law on it.

Mr. DOWELL. That is the idea; it is a preference we are giving them. They are the only ones who can take this homestead. It is not a preference question at all. That is the reason I want to get a clear-cut decision, because it is giving the right to one and excluding the other.

The CHAIRMAN. We gave the right to the Indian and excluded you and me.

Mr. ALMON. Why is not that a preference then?

The CHAIRMAN. We gave the absolute right to the soldiers and you and I were excluded. We gave them scrip, and you could not get that, but the Civil War veterans did and sold it. Some are selling it yet. That certainly is a preference right.

Mr. DOWELL. There is no question about the preference, and there is no doubt that it has been well settled.

The CHAIRMAN. We want to legislate constitutionally, of course. We must do it if we legislate at all, and if there is any question as to the constitutionality of this proposed legislation it ought to be presented now, if anyone knows it, and I am glad you are asking these questions, and I would like to have the Attorney General answer them if he can.

Mr. IRWIN. I can not say but what this is a preference.

Mr. DOWELL. It can not be a preference under this bill. It is an absolute exclusion now of all except a certain class of citizens.

**Mr. IRWIN.** From a certain part of the public lands; not all of them.

**Mr. DOWELL.** But this part that is included in the bill.

**Mr. IRWIN.** Admitting that it is not a preference, there is not the slightest doubt in my own mind but what the cases cited would uphold legislation of this kind. The power of Congress over the Territories is within certain limits absolute. I do not mean to say that Congress could pass legislation affecting the citizens of the Territory of Hawaii which would deny them personal liberty, or which would take their property away from them without due process of law. Those are fundamental rights. This is not a fundamental right.

**Mr. ALMON.** Mr. Dowell, let me ask you a question. What is the difference between this question that is now pending and the case cited by the chairman of certain citizens of the United States, for instance, the veterans of the Mexican War, having been authorized by Congress to select certain land belonging to the Government as a bounty for their services in the Mexican War, and that excluded all other citizens who were not Mexican veterans from selecting lands? Now, this bill provides that certain classes of Hawaiian citizens who are Hawaiians by birth or blood have the right if they desire to select certain lands in the Hawaiian Islands as homesteads, and excludes all others who are not of that character from the right to select such lands. Now, will you explain the difference in the two?

**Mr. DOWELL.** I think you have the nearest proposition to the one that we have before us that has been suggested here.

**Mr. ALMON.** I will ask you to explain the difference.

**Mr. DOWELL.** I am not familiar enough with these decisions to give you a decision on the question.

**Mr. ALMON.** You said that one was a preference and the other was not a preference. The chairman stated that case, and you said one was a preference and the other was not.

**Mr. DOWELL.** You are stating it in a different form—that it was the right to take certain lands.

**The CHAIRMAN.** That is what I stated.

**Mr. DOWELL.** And if that is correct, it may be a similar proposition.

**The CHAIRMAN.** The giving of scrip to the Civil War veterans and legislating so that he need not live on a homestead after five years is not a preference.

**Mr. ALMON.** It is a right.

**Mr. DOWELL.** It is a preference, but the scrip was only for the purpose of giving him the right to homestead in a certain way.

**The CHAIRMAN.** No; he could sell it to you or to me or to anybody else.

**Mr. DOWELL.** But the holder was entitled to take a homestead.

**The CHAIRMAN.** You could not get scrip?

**Mr. DOWELL.** Except by buying it from him.

**The CHAIRMAN.** You could not get it from the Government and the length of time to live upon a homestead was also a preference. I mean it is a right given to him not given to any other class of citizens.

**Mr. DOWELL.** That is true; that is a preference.

**The CHAIRMAN.** And the Indians received lands to the exclusion of other citizens. That is certainly in line with this legislation, in harmony with this legislation.

**Mr. DOWELL.** I am not contending that it is not, Mr. Chairman. I am trying to get, if I can, the reasoning why it is within the Constitution.

The CHAIRMAN. We are discussing this to arrive at a conclusion, but not a conclusion that we have to arrive at to-night.

Now, are there any other questions?

Mr. DOWELL. May I ask this question: You are familiar with this law. You have referred to Indian legislation. What was this legislation? Was this a certain tract of land set aside to Indians originally?

The CHAIRMAN. Yes.

Mr. DOWELL. For their use?

The CHAIRMAN. Yes.

Mr. HUMPHREYS. That was done by treaty?

The CHAIRMAN. That was done by treaty.

Mr. HUMPHREYS. We were dealing with a foreign nation.

Mr. DOWELL. We were dealing with a tribe, and we gave them these lands by virtue of an agreement that we made with them. It seems to me that the Indian proposition is hardly a parallel with the question we have before us.

The CHAIRMAN. I think it is, because the Hawaiians were deprived of their lands without any say on their part, either under the kingdom, under the republic, or under the United States Government.

Mr. DOWELL. Her equity. That is true.

The CHAIRMAN. And the Indians were deprived of their lands regardless of their wishes or welfare, except to say, "You move away from here and we will give you this. You go away from Georgia and Alabama and Mississippi over into Oklahoma and we will give you those lands. We want these ourselves." Of course there is a treaty proposition, although they were forced to sign. When they would not sign, we went to war with them and made them sign.

Mr. DOWELL. That is true, but in principle have we not a different proposition because we have no government or tribe or organization to deal with here?

The CHAIRMAN. We have the law of the land of Hawaii from ancient times right down to the present where the preferences were given to certain classes of people.

Mr. WEAVER. Mr. Chairman, you can legislate for a class if you legislate evenly for that class. No citizen of Hawaii has any title vested or otherwise in the public lands. Therefore when you say that you will allow native Hawaiians to enter upon these lands upon certain terms, it does not carry the idea of class legislation. Now, in the western part of North Carolina there was a section of the State which the United States took by cession from the Cherokee Indians. It originally included practically all of my congressional district. For many years that was not open to entry at all. But no citizen of North Carolina—it was in North Carolina—but no citizen had any vested rights in the lands included in that boundary. A man who had been in the Revolutionary War could enter lands in there, veterans of the Revolutionary War, and gradually by various acts of the legislature these lands were opened up to entry upon restricted terms, and these entries were always upheld by our supreme court, and if the attorney general would examine the North Carolina decisions it might be helpful in regard to the question under discussion.

The CHAIRMAN. I wish you would do that.

Mr. WEAVER. I will do that.

Mr. WISE. I would like to ask one question if I may. This bill provides that the lands going to the Hawaiians shall not go to them in fee, but the title is to remain in the Government. Is that to be considered, too, that we are leasing it?

Mr. ALMON. I think there is no difference in principle.

Mr. WEAVER. It is for 999 years.

Mr. WISE. Suppose you strike out the 999 years, does not that give you more right to pass this bill? I am looking to the point where I can go home and say that it is legal.

The CHAIRMAN. I think that it is legal, but I would not stake my reputation upon it. I think that it is legal. I think we can legislate.

Mr. IRWIN. Mr. Chairman, I desire to state for the information of the committee that I have a copy of an article that was written in 1895 by the President of the then Republic of Hawaii, Judge Dole, who was subsequently the first governor of the Territory and after that judge of the United States district court. He was very familiar with the evolution of Hawaiian land titles. He wrote an article published in the Overland Monthly Magazine in 1895. I have a copy of the article here, and if the committee so desires I will file it with the record.

The CHAIRMAN. Certainly. It will be printed in the record.

(The article referred to follows:)

#### EVOLUTION OF HAWAIIAN LAND TENURES.

[By the President of the Hawaiian Republic.]

When the Hawaiian pilgrim fathers first landed on the lonely coast of Hawaii from their long and exhausting ocean voyage in their canoes decked with mats and rigged with mat sails, it was for them a new departure in government and social and industrial economy. Their past, with its myths of origin, its legends of struggle and wandering, its faiths and customs, and rites and ceremonies, its lessons of victory and defeat, its successes over nature, was still their present authority and paramount influence, as they feebly began a new social enterprise upon the desolate yet grand and beautiful shores of their new inheritance. Their past still held them through its venerable sanctions, and yet they were free in the freedom of a new and unoccupied land to add to its accumulations and to improve upon its lessons.

We may imagine that the remnant of the freight of their storm-worn canoes included a few household idols, a live pig or two, some emaciated chickens, a surviving breadfruit plant, and kou and other seeds. There were women as well as men in the company; the little children had succumbed to the hardships of the voyage, which was undertaken to escape the indignities and confiscations incident to the status of a defeated party in tribal warfare.

These people, lean and half famished, gladly and with fresh courage took possession of their new world. As soon as they recovered their strength they built a heiau (temple) and sacrificed to their gods.

After a little exploration they settled in a deep valley sheltered by steep cliffs and watered by an abundant stream of clear water abounding in fish and shrimps. At the mouth of the gorge was the sea, where there were shellfish, crabs, and a variety of fish. Fruits of various kinds flourished on the hillsides, with some of which they were

acquainted, while others were new to them. They found varieties of the kapa (native cloth) plant, and understanding the process of making its bark into cloth, they restored their wardrobe, which had for the most part disappeared in the vicissitudes of the voyage. They also discovered the taro (*Arum esculentum*) growing wild in mountain streams, which they hailed as an old friend, feeling that now their satisfaction with their new home was complete. The cultivation of this was begun at once as a field or dry-land crop, as had been the practice in the home land, but as time went on and some crops failed for want of rain irrigation was used until at length, it may have been generations after, the present method of cultivating the crop in permanent patches of standing water become established. This result was greatly favored by the abundance of running water, which was a feature of the country.

Children were born and grew up and intermarried, and the colony grew and prospered. Exploring parties went out from time to time and other watered valleys were found, and bays and reefs rich in fishing resources. As the community began to crowd the limited area of the valley which was their resting place, one and another of the newly discovered and favored localities was settled, generally by a family consisting of the parents and grown up boys and girls. And now and then new companies of exiles from the southern islands found their weary way over the ocean, bringing perhaps later customs and adding new gods to the Hawaiian pantheon. So Hawaii was gradually populated, and when its best localities were occupied, Maui began to be colonized, and then its adjacent islands, until the whole group was stocked with people.

There have been a few chiefs in the pioneer company who largely directed the affairs of the colony, and whose descendants furnished chiefs for the growing demands of the branch colonies. Among the new arrivals also were occasional chiefs that were hospitably welcomed and accredited as such and accorded corresponding position and influence. It is also probable that in the very early period when chiefs were scarce the head men of some of the settlements that had branched off from the parent colony acquired the rank of chiefs, from the importance of their positions and the influence which their authority over the lands of their respective settlements naturally gave them.

Such acquired rank descended to their children, in some cases doubtless with an increase of dignity due to marriages with women of chief rank; and so some new families of chiefs originating from the common people, or makaaiananas, were established.

This early period of Hawaiian history for a number of generations was a time of industrial enterprise and peaceful and prosperous growth. There was no occasion for fighting, for there was land and water enough for all and every one was busily employed. It was the golden age of Hawaii. There were taboos indeed, but only religious ones. No chief was powerful enough yet to proclaim taboos for political purposes, nor had the necessity for political taboos yet arisen. The arts prospered; the Hawaiian canoe developed; the manufacture of kapa flourished and made progress in the direction of variety of fabric and its esthetic decoration; royal garments of birds' feathers were manufactured; implements of stone and of wood for mechanical and industrial work were invented and improved



upon; and great engineering enterprises were undertaken, such as the irrigating systems of Wahiawa, Kapaa, and Kilauea, on the island of Kauai, and great sea walls enclosing bays and reefs for fish ponds, such as the one at Huleia, on Kauai, and at many other places all over the islands. The antiquity of some of these is so great that even tradition fails to account for their origin, as in the case of the parallel irrigating ditches at Kilauea on Kauai, the digging of which is attributed by the Hawaiians to the fabled moo, or dragon, and the deep-water fish pond wall at the Huleia River on Kauai, which is supposed to have been built by the menehunes—the fabled race of dwarfs—distinguished for cunning industry and mechanical and engineering skill and intelligence. In reality they were the pioneers of the Hawaiian race who took complete industrial and peaceful possession of the country, and this early period is distinctly of the period of menehunes or skillful workers.

Principles of land tenure developed slowly through this period, probably from some form of the patriarchal system into a system of tribal or communal ownership. There was land enough for everyone, and holdings at first were based upon possession and use. As in the irrigating customs of the Hawaiians, where there was an abundance of water, every taro grower used it freely and at all times, according to his own convenience, and there were no regulations, but in those localities where the water supply was limited, strict rules for its distribution grew up, so when the land was not occupied there was freedom in its use, it being easier to locate new holdings than to quarrel about old ones. But as land irrigation developed, requiring permanent and costly improvements in the way of irrigating ditches and the building of terraces on the valley slopes for the foundation of taro patches, such improved localities acquired a special value, and the more real sense of ownership in land, which is based upon an investment of labor in the soil beyond the amount required for the cultivation of a crop, began. A quality of this ownership was necessarily permanence, because of the permanence of the improvements that created it.

Another element of tenure arose as the population increased and the best lands became occupied; the increasing demand gave them a market value, so to speak, which gave rise to disputes over boundaries. Although such feuds, sometimes attended with personal violence, favored the development of the later feudalism of the Hawaiians, yet the early period, containing many of the features of tribal government and land tenure common to the Samoans, Fijians, and Maoris of New Zealand, probably lasted a long time, with a gradual development of the principles of ownership in land and descent from parent to child subject to tribal control, until it was perhaps radically and violently interrupted by the turbulent times beginning in the thirteenth century and lasting till the conquest of the group by Kamehameha I. This was a period of internecine warfare promoted by the ambition of chiefs for political power and personal aggrandizement, and was most favorable to the growth of feudalism, which rapidly took the place of the previous political status.

As was inevitable under the new conditions, the importance and influence of the chiefs was greatly increased, to the immediate prejudice of the rights and privileges of the people, who were oppressively taxed in support of the wars brought on by the whim of their respective

rulers, or to defend them from the attacks of ambitious rivals. The growing necessity for protection of life and property caused everyone to attach himself closely to some chief, who afforded such protection in consideration of service and a portion of the produce of the soil. Then the chiefs, as their power increased, began to levy contributions of supplies arbitrarily, until it came to pass that the chief was the owner of the whole of the products of the soil and the entire services of the people, and so it was a natural consequence that he became finally the owner also of the soil itself.

These results, which were hastened by the constant wars of this period, were yet of slow growth. The small valley and district sovereignties one by one disappeared in the clutch of rising warrior chiefs, who thus added to their dominions and power. As such principalities became formidable, it became necessary for the remaining smaller chiefdoms to ally themselves to some one of them. And so this process went on until each island was at length under the control of its high chief, and then finally the whole group passed under the sovereignty of Kanehameha I, and the feudal program was complete.

During this period the control of the land became very firmly established in the ruling chiefs, who reserved what portions they pleased for their own use, and divided the rest among the leading chiefs subject to them. The position of the latter was analogous to that of the barons of European feudalism. They furnished supplies to their sovereign, and in case of war were expected to take the field with what fighting men their estates could furnish. These barons held almost despotic sway over their special domains apportioning the land among their followers according to the whim of the moment or the demands of policy, or farming it out under their special agents, the *konohikis*, whose oppressive severity in dealing with the actual cultivators of the soil was notorious. Thus the occupancy of land had now become entirely subject to the will of the ruling chief, who not only had the power to give but also to take away at its royal pleasure. This despotic control over land developed in the direction of greater severity rather than toward any recognition of the subjects' rights, and it finally became an established custom for a chief who succeeded to the sovereign power, even peacefully by inheritance, to redistribute the land of the realm.

It is evident that this status was, for the time being, disastrous and destructive to all popular rights in land that may have previously existed. If there was formerly anything like succession in tenure from father to son and tribal ownership, such holdings were now utterly destroyed, and the cultivators of the soil were without rights of cultivation or even of habitation. "The country was full of people who were hemo, that is dispossessed of their lands at the caprice of a chief. Three words from a new to a former *konohiki*—'Ua hemo oe' (you are removed)—would dispossess a thousand unoffending people and send them houseless and homeless to find their *makamakas* (friends) in other valleys." (Alexander's reply to Bishop Stanley.)

The redistribution of lands upon the accession of a ruling chief was naturally carried out with great severity when his accession was the result of civil war between rival factions or the triumph of an invading army. In the case of a peaceful accession of a young chief to sovereign power, the redistribution was mainly to his personal friends and companions, and was less complete than in the case of

a revolution of force. Very influential men of the previous reign would not be disturbed, both because it would be dangerous and impolitic to do so, and because their assistance was desired. A curious survival of this feudal custom of redistribution of power and land upon the accession of a new ruler is recognizable in the equally reprehensible sentiment of modern politics, expressed in the well-known words, "to the victors belong the spoils."

When Kamehameha I conquered the group, excepting the island of Kauai, which was accomplished only after the most desperate fighting, his success carried with it the fullest and severest application of this custom, and it meant to his defeated enemies loss of all political power and of the lands which were the basis of such power. The island of Kauai, through the treaty of annexation between the king of that island, Kaumaulii, and Kamehameha, might have escaped such misfortunes but for the rebellion of Humehume, the son of Kaumaulii, some years later, which, being suppressed, subjected the insurgent chiefs to the rigorous rule of confiscation of their lands and the annihilation of their political influence.

Thus Kamehameha became at last, through these feudal custom and by virtue of his conquest, the fountain head of land tenures for the whole group. The principles adopted by the land commission in 1847 opens with the following statement:

When the islands were conquered by Kamehameha I he followed the examples of his predecessors and divided the lands among his principal warrior chiefs, retaining, however, a portion in his hands to be cultivated or managed by his own immediate servants or attendants. Each principal chief divided his lands anew, and gave them out to an inferior order of chiefs or persons of rank, by whom they were subdivided again and again, passing through the hands of four, five, or six persons, from the king down to the lowest class of tenants. All these persons were considered to have rights in the lands or productions of them. The proportions of these rights were not very clearly defined, but were, nevertheless, universally acknowledged.

During Kamehameha's long and vigorous reign affairs became settled to an extent to which the country had been unaccustomed. Long and undisturbed possession of their lands by chiefs was a preparation for the development of a sentiment favorable to permanent individual rights in land. Such a sentiment had become well defined in the mind of Kamehameha before his death, and may be regarded as the seed germ of a system of land tenures which afterwards developed.

Many of those who have been interested in this subject have been accustomed to regard the idea of private rights in land in these islands as one of foreign introduction during the reign of Kamehameha III, at which time the remarkable change from feudal to private real estate control took place. But the landed reforms of that reign were the results of causes which had been long and powerfully at work. The century plant had slowly grown, but when its full time came it swiftly and abundantly blossomed.

At the meeting of chiefs at Honolulu upon the arrival of the frigate *Blonde* in 1852 with the remains of Kamehameha II and his wife to consider the question of the succession to the throne and other matters, as reported in the "*Voyage of the Blonde*," page 152 and following, Kalaimoku, the agent, in his address to the council, referred to the inconveniences arising from the reversion of lands to the King on the death of their occupants—a custom partially revived under Kamehameha II, but which it had been the object of Kame-

kameha I to exchange for that of hereditary succession. This project of their great king he proposed to adopt as the law, excepting in such cases as when a chief or landholder should infringe the laws—then his land should be forfeited and himself tabooed. Several chiefs at once exclaimed, "All the laws of the great Kamehameha were good; let us have the same!"

Lord Byron, captain of the *Blonde*, presented the council some written suggestions in regard to the administration of affairs which are contained in the following article:

That the lands which are now held by the chiefs shall not be taken from them, but shall descend to their legitimate children, except in cases of rebellion, and then all their property shall be forfeited to the King.

The account proceeds as follows (p. 157):

These hints, it will be at once perceived, are little more than a recommendation quietly to pursue the old habits and regulations of the islands. Kamehameha I had begun to establish the hereditary transmission of estates, and Lord Byron's notice only adds the sanction of the British name to it.

This principle adopted previously to the reign of Kamehameha III greatly influenced the progress of events.

When after the death of King Kamehameha I his son Liholiho came to the throne as Kamehameha II, the administration of the Government was shared by him with Kaahumanu, the kuhina nui (a premier or minister having a veto on the King's acts), one of Kamehameha's widows, and a woman of great force of character. It was the desire of Kamehameha II to make a redistribution of the lands of the realm according to custom, but Kaahumanu was opposed to it, and her influence, together with the united strength of the landed interests which had become firmly established in the chiefs during the long reign of Kamehameha I, was too strong for him, and beyond a few assignments among his intimate friends he relinquished his purpose. The distribution of lands, therefore, by Kamehameha I remained for the most part as a permanent settlement of the landed interests of the kingdom, to be afterwards modified in favor of the common people of the Government, but never ignored.

During the period from the distribution of lands by King Kamehameha I, about 1795, until the year 1839, the sovereign held a feudal authority over the whole landed estate of the kingdom, which included the right, as above set forth, summarily to cancel the rights in the lands of any chief or commoner. There was a growing tendency, however, during this period toward the provision in favor of the descent of lands from parent to child adopted by the chiefs upon the return of the *Blonde*, and the feudal right of the sovereign over the land of the subject was more rarely exercised as time went on. Increasing security in tenure led to increasing activity in land transactions. Chiefs transferred lands to others, and they became a marketable commodity; there was buying and selling—some speculating. The sovereign gave away and sold lands here and there. Foreigners became landholders. Still there was no permanence in the tenure, the enactment by the chiefs at the time of the *Blonde* being in the nature rather of an expression of an opinion than a binding law. The kingdom was then under the regency of Kaahumanu and Kalanimoku, and Kamehameha III, being still a minor, was not a party to this provision and it was not regarded as binding upon him.

The status of land matters at this time was similar to that which existed in England after the Norman conquest, but there the progress of events, owing undoubtedly to the influence of a foreign civilization, was far more rapid than here. The possession of land by foreigners with strong governments back of them, represented here by men-of-war and zealous consuls, had a stimulating effect upon this movement. It was a transition period; the strength of the feudal despotism was fast waning and there was as yet nothing of a positive nature to take its place. This uncertainty in regard to land was a serious obstacle to material progress. The large landholders—the chiefs and some to whom they had given or sold their lands—felt a degree of security in their holdings through the growing sentiment toward permanent occupation and hereditary succession; but this was insufficient to place land matters upon a satisfactory footing and to justify extensive outlays in permanent improvements. Moreover that class of occupiers of land known as tenants, which class included a large proportion of the common people, was still in a condition which had scarcely felt the favorable influences which had begun to improve the status of the chiefs. They were hardly recognized as having civil rights, although they enjoyed freedom of movement and were not attached to any particular lands as belongings of the soil. If a man wanted a piece of land to live on and cultivate, he had to pay for it by a heavy rent in the shape of weekly labor for his landlord, with the additional liability of being called upon to assist in work of a public character, such as building a heiau or making a road or fish-pond seawall.

With all this, the tenant was liable to be ejected from his holding without notice or a chance of redress. That this defenseless condition of the common people was rigorously taken advantage of by the landholding chiefs and their konohikis, we have the evidence of those living in this period, including some of the early missionaries, that it was a feature of the times that large numbers of homeless natives were wandering about the country. This want of security in the profits of land cultivation led many to attach themselves to the persons of the chiefs as hangers on, whereby they might at least be fed in return for the desultory services which they were called upon to perform. This practice of hanging-on, or following a chief for the sake of food, was a feature of the perfected feudalism, when insecurity of land tenure was at its height, and the word defining it—hoopilimeaa, probably originated at that period.

In 1833, Kamehameha III, then twenty years old, assumed the throne, and soon became deeply interested in public affairs. In many ways the unsatisfactory status of land matters was pressed upon his attention. The growing sentiment towards permanence in tenure powerfully influenced the situation. The defenseless and wretched condition of the common people in regard to their holdings appealed to his humanity and to his sense of responsibility as their ruler. The inconsistency of his sovereign control of all the lands of the kingdom with any progress based upon the incoming tide of civilization became more and more evident every day.

The increasing demand among foreigners for the right to buy and hold land was an element of importance at this national crisis and doubtless had much to do in hastening the course of events. The

king not only consulted the great chiefs of the realm, who certainly were in favor of permanence in tenure for themselves, but he also conferred with foreigners on the subject. In 1863 Commodore Kennedy and Capt. Hollins visited Honolulu in the United States ships *Peacock* and *Enterprise*, and during their stay held conferences with the chiefs, in which the question of land tenure was discussed. In 1837, Capt. Bruce of the British frigate *Imogene* had several meetings with the chiefs in regard to matters of government, when, in all probability, land matters were considered. The influence of Mr. Richards, for a long time the confidential adviser of the chiefs, was undoubtedly very great with the king in leading his mind to the definite conclusion that he reached in 1839, in which year, on the 7th day of June, he proclaimed a bill of rights which has made his name illustrious and the day on which it was announced worthy of being forever commemorated by the Hawaiian people. This document, though showing in its phrases the influence of the Anglo-Saxon principles of liberty, of Robert Burns and the American Declaration of Independence, is especially interesting and impressive as the Hawaiian Magna Charter, not wrung from an unwilling sovereign by force of arms, but the free surrender of despotic power by a wise and generous ruler, impressed and influenced by the logic of events, by the needs of his people, and by the principles of the new civilization that was dawning on his land.

The following is a translation of this enlightened and munificent royal grant:

"God hath made of one blood all nations of men to dwell on the earth in unity and blessedness. God hath also bestowed certain rights alike on all men and on all chiefs, and all people of all lands.

"These are some of the rights which He has given alike to every man and every chief of correct deportment: life, limb, liberty, freedom from oppression, the earnings of his hands and the productions of his mind—not, however, to those who act in violation of the laws.

"God has already established government and rule for the purpose of peace; but in making laws for the nation, it is by no means proper to enact laws for the protection of the rulers only, without also providing protection for their subjects; neither is it proper to enact laws to enrich the chiefs only, without regard to enriching their subjects also, and hereafter there shall by no means be any laws enacted which are at variance with what is above expressed, neither shall any tax be assessed, nor any service or labor required of any man in a manner which is at variance with the above sentiments.

"The above sentiments are hereby proclaimed for the purpose of protecting alike both the people and the chiefs of all these islands while they maintain a correct deportment; that no chief may be able to oppress any subject; but that chiefs and people be able to enjoy the same protection under one and the same law.

"Protection is hereby secured to the persons of all people, together with their lands, their building lots, and all their property, while they conform to the laws of the kingdom and nothing whatever shall be taken from any individual except by express provision of the laws. Whatever chief shall act perseveringly in violation of this declaration shall no longer remain a chief of the Hawaiian Islands, and the same shall be true of the governors, officers, and all land agents. But if anyone who is disposed should change his course and regulate his

conduct by law, it shall then be in the power of the chiefs to reinstate him in the place he occupied previous to his being deposed."

It will be seen that this Bill of Rights left much to be done in defining the rights in land granted by it. It appears by the constitution enacted by the king, the kuhina nui, or premier, and the chiefs the following year, that the feudal right of controlling transfers was still retained in the sovereign, in the following words:

"Kamehameha I was the founder of the kingdom, and to him belonged all the land from one end of the islands to the other, though it was not his own private property. It belonged to the chiefs and people in common, of whom Kamehameha I was the head and had the management of the landed property. Wherefore there was not formerly, and is not now, any person who could or can convey away the smallest portion of land without the consent of the one who had, or has, the direction of the kingdom."

The Bill of Rights promoted activity in land matters, and for the next few years difficulties arising from land disputes pressed upon the king, producing great confusion and even endangering the autonomy of the kingdom. In 1841, Ladd & Co., the pioneers in sugar cultivation in this country, obtained from the king a franchise that gave them the privilege of leasing any unoccupied lands for 100 years at a low rental. This franchise was afterwards transferred to a Belgian colonization company of which Ladd & Co. were partners, under circumstances that made a good deal of trouble for the Hawaiian Government before the matter finally disappeared from Hawaiian politics. The intimidation of the King by Lord Paulet, captain of the British frigate *Carysfort*, under which the provisional cession of the country to England was made in 1843, was based largely upon a land claim of Mr. Charlton, an Englishman, which was regarded by the King as illegal, but which he finally indorsed under Paulet's threat of bombarding Honolulu. These troubles naturally developed among the Hawaiians an opposition to the policy of allowing foreigners to acquire land which, in 1845, reached the definite stage of political agitation and petitions to the Government.

During these years of undefined rights the common people were protected in their holdings by law to a certain extent, but their tenure was based mainly upon their industrious cultivation of their lands, except as to house lots, and the payment of rent in labor. The question of the proportionate interests of the king, the chiefs, and the common people in the lands of the kingdom was one of great difficulty. As we have seen, the constitution of 1840 distinctly recognized such a community of interest, but Hawaiian precedents threw no light upon the problem of division. It had been a new departure to admit that the people had any inherent right to the soil, and now to carry out that principle required the adoption of methods entirely foreign to the traditions of Hawaiian feudalism.

In this transition time the necessity of an organized government separate from the person of the king became apparent to the chiefs, and this was carried out by three comprehensive acts in 1845, 1846, and 1847. The first, "to organize the executive ministry of the Hawaiian Islands"; the second, "to organize the executive departments of the Hawaiian Islands"; and third, "to organize the judiciary department of the Hawaiian Islands." As soon as the existence of a

responsible government detached from the person of the king became an accepted feature of the political system, it was felt that in some way or other the government ought to have public lands and become the source of land titles. At this inception the government as a distinct organization was possessed of no landed property; it may be said to have had a right to that portion of the king's interest in the landed property of the kingdom which he held in his official capacity, in distinction from that which belonged to him in his private capacity; but this was a mere theoretic right, dimly recognized at first, and only after innumerable difficulties and fruitless expedients was it finally developed and carried out in the great *mahele*, or divisions of lands between the king, the chiefs, and people in 1848. Elaborate laws were made for the purchase of land by the government from private landholders, which do not appear to have added materially to the public domain.

The act to organize the executive department contained a statute establishing a Board of Royal Commissioners to Quiet Land Titles. This statute was passed December 10, 1845. It was a tentative scheme to solve the land problem, and though not in itself sufficiently comprehensive for the situation, it was in the right direction and led through the announcement of principles of land tenure by the commission, which were adopted by the legislature, to a better understanding of the subject; and finally, in the latter part of 1887 (1847?) to the enactment by the king and privy council of rules for the division of the lands of the kingdom, which, with the statute creating the land commission and the principles adopted by them, formed a complete and adequate provision for the adjustment of all recognized interests in land on the basis of the new departure of the principles of tenure.

At the time of the creation of the Board of Commissioners to Quiet Land Titles and up to the enactment of rules by the privy council for land division the nation was still feeling its way through the maze of the difficult questions that were pressing upon it in this great reform in land matters. Each step it made threw light upon the path for the next one. The rapidity with which this reform was accomplished must be attributed not only to the wisdom and fidelity of the advisers of the nation but largely to the earnestness and patriotism of the king and chiefs, who cheerfully made sacrifices for the sake of a satisfactory solution of these questions.

The commissioners to quiet land titles were authorized to consider claims to land from private individuals acquired previous to the passage of the act creating the commission. This included natives who were in the occupancy of holdings under the conditions of use or payment of rent in labor, and also both natives and foreigners who had received land from the King or chiefs in the way of grants. The awards of the board were binding upon the Government if not appealed from, and entitled the claimant to a lease or a royal patent, according to the terms of the award, the royal patent being based upon the payment of a commutation of one-quarter or one-third of the unimproved value of the land, which commutation was understood to purchase the interest of the Government in the soil.

The principles adopted by the land commission use the words King and Government interchangeably, and failed to reach any adju-



dication if the separate rights of the King in distinction from those of the Government in the public domain, or in other words they failed to define the King's public or official interests in distinction from his private rights, although they fully recognized the distinction. There was, however, an implied apportionment of these two interests through the proceedings by which an occupying claimant obtained an allodial title. The commission decided that their authority coming from the King to award lands represented only his private interests in the lands claimed. Therefore, as the further payment of the claimant as a condition of his receiving a title in fee simple from the Government was one-third of the original value of the land, it follows that the King's private interest was an undivided two-thirds, leaving an undivided one-third belonging to the Government as such.

The commission also decided that there were but three classes of vested or original rights in land, which were in the King or Government, the chiefs, and the people, and these three classes of interest were about equal in extent.

The land commission began to work February 11, 1846, and made great progress in adjudicating claims of the common people, but its powers were not adequate to dispose of the still unsettled questions between the King, the chiefs, and the Government, though it must be admitted that it made progress in that direction. Neither were the chiefs ready to submit their claims to its decision.

After earnest efforts between the King and chiefs to reach a settlement of these questions, the rules already referred to were unanimously adopted by the King and chiefs in privy council December 18, 1847. These rules, which were drawn up by Judge Lee, embodied the following points: The King should retain his private lands as his individual property, to descend to his heirs and successors; the remainder of the landed property to be divided equally between the Government, the chiefs, and the common people.

So the land was all held at this time by the King, the chiefs, and their tenants. This division involved the surrender by the chiefs of a third of their lands to the Government or a payment in lieu thereof in money, as had already been required of the tenant landholders. A committee, of which Dr. Judd was chairman, was appointed to carry out the division authorized by the privy council, and the work was completed in 40 days. The division between the King and the chiefs was effected through partition deeds signed by both parties. The chiefs then went before the land commission and received awards for the lands thus partitioned off to them, and afterwards many of them commuted for the remaining one-third interest of the Government by a surrender of a portion.

After the division between the King and the chiefs was finished he again divided the lands that had been surrendered to him between himself and the Government, the former being known thereafter as crown lands and the latter as Government lands.

This division, with the remaining work of the land commission, completed the great land reform, the first signal of which was announced by Kamehameha III in his declaration of rights, June 7, 1839. A brief 10 years had been sufficient for the Hawaiian nation to break down the hoary traditions and venerable customs of the past and to climb the difficult path from a selfish feudalism to equal

rights, from royal control of all the public domain to present proprietorship and fee-simple titles for poor and for rich. It came quickly and without bloodshed, because the nation was ready for it. Foreign intercourse, hostile and friendly, and the spirit of a Christian civilization had an educating influence upon the eager nation united by the genius of Kamehameha I, with its brave and intelligent warrior chiefs resting from the conquest of arms, their exuberant energies free for the conquest of new ideas. With rare wisdom, judgment, and patriotism, they proved equal to the demands of the time upon them.

SANFORD B. DOLE.

Mr. WISE. You said in your brief that there was no equity in the Hawaiians' claim to some of this Government land.

Mr. IRWIN. Now, Mr. Wise, when I use the word "equity" I am using the term from the standpoint of the lawyer. I do not mean to say that they have no "quasi equitable" claim, but even that is not the right term. I do not mean to say that they are not entitled to consideration.

Mr. HUMPHREYS. A moral claim?

Mr. IRWIN. A moral equity or whatever you call it, but I am speaking from the standpoint of the lawyer; that it is not a claim that could be established in a court of equity.

Mr. LANKFORD. Could not go into court and force the Government to give title?

The CHAIRMAN. If they could they would not need to come to us for legislation.

Mr. WISE. They would not come here.

Mr. McCLELLAN. May I state a request to the committee?

The CHAIRMAN. What is it?

Mr. McCLELLAN. I feel it must be evident to the committee that these bills involve some consideration—

The CHAIRMAN. Do you wish to discuss the bills?

Mr. McCLELLAN. I do not want to discuss the bills.

The CHAIRMAN. Then I do not want to hear you. Mr. Shingle, Mr. Irwin, and Mr. Rawlins are active members of the Chamber of Commerce of Honolulu, and they are on the legislative commission from Hawaii, as is also Gov. McCarthy, who is an honorary member of the chamber, and Delegate Kalaniana'ole. There is also printed in the back of the pamphlet filed by the legislative commission of Hawaii the action of the chamber of commerce on these bills, and if that is what you wish to discuss, we do not care to hear it. We have not the time and I do not think you have anything to add that would be important. We have before us the chamber's opinion of the resolutions. The attorney and the secretary of the chamber met with the commission in Honolulu when the resolutions and tentative bills were being considered.

Mr. McCLELLAN. I would be very glad to know if that is the will of the committee or of the chairman. I will state that I have been appearing before this Committee on Hawaiian Affairs for the past 15 years, and this is the first time that I know of anybody coming before this committee—

The CHAIRMAN. You will come to order. You have no right to address this committee until you are asked. You have stated you do not want to discuss the bills. That is all we are considering.

Mr. McCLELLAN. I am stating my request to be heard. If that request is denied, I would like to have the record show it.

The CHAIRMAN. I have another proposition to bring before the committee with reference to the leprosarium. The Surgeon General of the United States Public Health Service was asked whether the department was willing that the leprosarium should be transferred to Hawaii, and he has written a letter stating that he is willing that it should be transferred. But he has not stated whether the Government has the legal right to transfer the leprosarium without legislation. If there is no objection I would like to ask the attorney general of Hawaii to seek the Solicitor of the Treasury and Department ascertain if this can be done without legislation, and if it can not to prepare a bill authorizing the transfer.

Mr. IRWIN. Very well, Mr. Chairman.

(The letter referred to follows:)

TREASURY DEPARTMENT,  
BUREAU OF THE PUBLIC HEALTH SERVICE,  
Washington, February 6, 1920.

HON. CHARLES F. CURRY,  
*House of Representatives, Washington, D. C.*

MY DEAR MR. CURRY: This bureau has been approached by the Territorial authorities concerning the transfer of the buildings of the leprosy investigation station at Kalawao, on the island of Molokai, to the Territorial authorities, so that these buildings might be moved to the Territorial leprosarium at Kalaupapa, and there be utilized. While concurring in the desirability of the transfer, the bureau is without authority to do this unless authorized by special act of Congress.

These buildings were erected in 1908 as a leprosy investigation station. Since that time the Territorial authorities provided a receiving station at Kalihi, which is so much more convenient and accessible, that the service investigations of leprosy have been transferred to Kalihi because of the impossibility of inducing the lepers to go to the station at Kalawao. At the same time the Territorial government established a leprosarium at Kalaupapa. No doubt these buildings if transferred to Kalaupapa could be made to serve a most useful purpose and contribute in no small manner to the efficiency of the treatment and the comfort of the inmates, while at the same time, in their present location, it is impossible to use the buildings for the purpose for which they were designed, and they continue to be only a source of expense for repair and preservation.

Very truly, yours,

J. C. PERRY,  
*Acting Surgeon General.*

The CHAIRMAN. If there is nothing else to come before the committee we will adjourn.

(Thereupon at 10.30 o'clock p. m. the committee adjourned.)

#### APPENDIX A.

Supplemental letter of the Surgeon General of the United States Public Health Service regarding proposed transfer of the leprosarium from the United States to the Territory of Hawaii, together with opinion by Hon. Lawrence Becker, Solicitor of the Treasury, Department of Justice, and the draft of a bill authorizing such transfer.

TREASURY DEPARTMENT,  
BUREAU OF THE PUBLIC HEALTH SERVICE,  
Washington, February 16, 1920.

HON. CHARLES F. CURRY,  
*House of Representatives, Washington, D. C.*

MY DEAR MR. CURRY: Referring to your request over the telephone, I am inclosing copy of a letter from the Solicitor of the Treasury, expressing the opinion that an act of Congress is necessary for the transfer of the Federal leprosy investigation station at Kalawao to the Territorial authorities of Hawaii.

The Solicitor of the Treasury made preliminary drafts of a bill which would authorize this transfer. A revised draft has been prepared in this office, and copies of it are transmitted herewith. You are advised that the draft, as it now stands, has the approval of the Public Health Service.

Very truly, yours,

J. C. PERRY,  
*Acting Surgeon General.*

DEPARTMENT OF JUSTICE,  
OFFICE OF THE SOLICITOR OF THE TREASURY,  
Washington, D. C., February 13, 1920.

Hon: J. H. MOYLE,  
*Assistant Secretary of the Treasury.*

SIR: I am in receipt of the letter of the Acting Surgeon General of the 12th instant, addressed to you and which you have referred to me, in which my opinion is requested whether or not the executive branch of the Government has power under present laws to transfer and cede back to the Territory of Hawaii the land and its equipment known as the Federal leprosy investigation station at Kalawao on the island of Molokai, or whether an act of Congress is necessary for such transfer, and in case an act of Congress is necessary, that I draft a bill for such purpose.

There is no act of Congress under which the executive branch of the Government is authorized to transfer such Federal leprosy investigation station to the Territory of Hawaii.

I am therefore of the opinion that an act of Congress is necessary to transfer such station, lands, building, and equipment to such Territory. I have drafted a bill for that purpose, as requested, which is herewith inclosed.

The papers submitted are herewith returned.

Very respectfully,

LAWRENCE BECKER, *Solicitor.*

Whereas the Federal leprosy investigation station at Kalawao, on the island of Molokai, in the Territory of Hawaii, has served its purpose and is not now being utilized because of the unwillingness of lepers to go to this station on account of its locality; and Whereas the Legislature of the Territory of Hawaii has requested that such station be ceded back to said Territory, so that said buildings may be used in connection with the leper settlement maintained by said Territory; therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury is hereby authorized and empowered to convey by quitclaim deed to the Territory of Hawaii the land or lands and buildings thereon of the Federal leprosy investigation station at Kalawao, on the island of Molokai, said lands being fully described in the proclamation of the governor of the Territory of Hawaii dated June 28, 1905, by which such land or lands were ceded to the United States of America, and also to transfer to the Territory of Hawaii such of the equipment of the said station as is not needed for the use of the Public Health Service.

## APPENDIX B.

(H. R. 12683, 66th Cong., 2d sess.)

A BILL To amend an act entitled "An act to provide a government for the Territory of Hawaii," approved April 30, 1900, as amended by an act approved March 3, 1905, and as further amended by an act approved April 2, 1908, and as further amended by an act approved March 3, 1909, and as further amended by an act approved May 27, 1910, by amending sections 26, 55, 66, 73, 80, 86, and 92 thereof and by adding two new sections thereto, to be known as sections 73a and 103a.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 26 of an act entitled "An act to provide a government for the Territory of Hawaii," approved April 30, 1900, as amended by section 2 of an act approved May 27, 1910, be, and hereby is, amended to read as follows:

"Sec. 26. That the members of the legislature shall receive for their services, in addition to mileage at the rate of 20 cents per mile each way, the sum of \$1,000 for each regular session, paid in three equal installments on and after the first, thirtieth, and fiftieth days of the session, and the sum of \$500 for each special session: *Provided,*

That they shall receive no compensation for any extra session held under the provisions of section 54 of this act."

Sec. 2. That that portion of section 55 of said act as amended by section 4 of an act approved May 27, 1910, which reads: "and the total indebtedness of the Territory shall not at any time be extended beyond 7 per centum of such assessed value of property in the Territory," be, and hereby is, amended to read as follows: "and the total indebtedness of the Territory shall not at any time be extended beyond 10 per centum of such assessed value of property in the Territory."

Sec. 3. That that portion of section 66 of said act which reads "shall be a citizen of the Territory of Hawaii" be, and hereby is, amended to read as follows: "Shall be a citizen of the Territory of Hawaii and shall have resided therein for at least five years."

Sec. 4. That section 73 of said act as amended by an act approved April 2, 1908, and as further amended by an act approved May 27, 1910, be, and hereby is, amended to read as follows:

"Sec. 73. That the laws of Hawaii relating to public lands, the settlement of boundaries, and the issuance of patents on land commission awards, except as changed by this act, shall continue in force until Congress shall otherwise provide. That subject to the approval of the President all sales, grants, leases, and other dispositions of the public domain and agreements concerning the same, and all franchises granted by the Hawaiian Government in conformity with the laws of Hawaii, between the 7th day of July, 1898, and the 28th day of September, 1899, are hereby ratified and confirmed. In said laws 'land patent' shall be substituted for 'royal patent'; 'Commissioner of Public Lands' for 'Minister of the Interior'; 'agent of public lands' and 'Commissioner of Public Lands', or their equivalents; and the words 'that I am a citizen of the United States', or 'that I have declared my intention to become a citizen of the United States as required by law,' for the words, 'that I am a citizen by birth (or naturalization) of the Republic of Hawaii,' or 'that I have received letters of denization under the Republic of Hawaii,' or 'that I have received a certificate of special rights to citizenship from the Republic of Hawaii.' And no lease of agricultural land shall be granted, sold, or renewed by the Government of the Territory of Hawaii for a longer period than fifteen years, and in every such case except as provided in section 73a hereof, the land, or any part thereof so leased, may at any time during the term of the lease be withdrawn from the operation thereof for homestead or public purposes, in which case the rent reserved shall be reduced in proportion to the value of the part so withdrawn, and every such lease shall contain a provision to that effect: *Provided, however,* That in the case of undeveloped arid lands which are capable of being converted into agricultural lands by the development of the underlying and/or contiguous or adjacent waters for irrigation purposes, the governor and the land commissioner, with the approval of two-thirds of the land board, may, subject to the requirements of section 73a hereof, lease such arid lands to any person, firm, or corporation upon such terms and conditions as may be advantageous to the Territory of Hawaii, and for a sufficient length of time to induce and justify the investment of private capital in the development of the waters necessary for the irrigation of such arid lands, and such lease shall not have contained therein the withdrawal clause now provided for by law and shall be sold at public auction to the highest bidder after due advertisement in the manner now provided by law, the notice of sale of such lease to contain all the terms and conditions of the same.

"All funds arising from the sale or lease or other disposal of such lands shall be appropriated by the laws of the government of the Territory of Hawaii, and applied to such uses and purposes for the benefit of the inhabitants of the Territory of Hawaii as are consistent with the joint resolution of annexation, approved July 7, 1898: *Provided,* That there shall be excepted from the provisions of this section all lands heretofore set apart or reserved by Executive order or orders by the President of the United States.

"No person shall hereafter be entitled to receive any certificate of occupation, right of purchase lease, cash freehold agreement, or special homestead agreement who, or whose husband or wife, shall previously have taken or held more than ten acres of any land under any such certificate, lease, or agreement hereafter made or issued, or under any homestead lease or patent based thereon; or who, or whose husband, or wife or both of them, shall own other land in the Territory the combined area of which and the land in question exceeds eighty acres; or who is an alien, unless he has declared his intention to become a citizen of the United States as provided by law, nor shall any person who, having so declared his intention, hereafter take or hold under any such certificate, lease, or agreement, continue so to hold or become entitled to a homestead lease or patent of the land, unless he shall have become a citizen within five years after so taking.

"No land for which any such certificate, lease, or agreement shall hereafter be issued, or any part thereof, or interest therein, or control thereof, shall, without the written consent of the commissioner and governor, thereafter, whether before or after a homestead lease or patent has been issued therein, be or be contracted to be in any way, directly or indirectly by process of law or otherwise, conveyed, mortgaged, leased, or otherwise transferred to or acquired or held by or for the benefit of any alien or corporation; or before or after the issuance of a homestead lease or before the issuance of a patent to or by or for the benefit of any other person; or after the issuance of a patent to or by or for the benefit of any person who owns, holds, or controls, directly or indirectly, other land or the use thereof the combined area of which and the land in question exceeds eighty acres: *Provided*, That these prohibitions shall not apply to transfers or acquisitions by inheritance or between tenants in common.

"Any land in respect of which any of the foregoing provisions shall be violated shall forthwith be forfeited and resume the status of public land and may be recovered by the Territory or its successors in an action of ejectment or other appropriate proceedings. And noncompliance with the terms of any such certificate, lease, or agreement, or of the law applicable thereto, shall entitle the commissioner, with the approval of the governor before patent has been issued, with or without legal process, notice, demand, or previous entry, to retake possession and thereby determine the estate: *Provided*, That the times limited for compliance with any such terms may be extended by the commission, with such approval upon its appearing that an effort has been made in good faith to comply therewith.

"The persons entitled to take under any such certificate, lease, or agreement shall be determined by drawing or lot, after public notice as hereinafter provided; and any lot not taken, or taken and forfeited, or any lot or part thereof surrendered with the consent of the commissioner, which is hereby authorized, may be disposed of upon application at not less than the advertised price by any such certificate, lease, or agreement without further notice. The notice of any sale, drawing, or allotment of public land shall be by publication for a period of not less than sixty days, in one or more newspapers of general circulation published in the Territory.

"The commissioner, with the approval of the governor, may give to any citizen of the United States, or to any person who has legally declared his intention to become a citizen, and who shall hereafter become such, which said person has, or who and whose predecessors in interest have, improved any parcel of public lands and resided thereon continuously since January 1, 1909, a preference right to purchase so much of such parcel and such adjoining land as may reasonably be required for a home, at a fair price, to be determined by three disinterested citizens appointed by the governor, in the determination of which price the value of improvements shall, when deemed just and reasonable, be disregarded: *Provided, however*, That if the land upon which any such person has, or who and whose predecessors in interest have, resided and so improved, has been or shall be hereafter reserved for public purposes, either for the use of the United States of America or of the Territory of Hawaii, the commissioner may, with the approval of the governor, grant to any such person a preference right to purchase an equal area of public land of similar character and value, situated elsewhere in the same land district: *And provided further*, That this privilege shall not be extended to any original lessee or to an assignee of an entire lease of public lands.

"The commissioner may also, with such approval, issue for a nominal consideration to any church or religious organization, or person or persons or corporations representing it, a patent for any parcel of public land occupied continuously for not less than five years heretofore and still occupied by it as a church site under the laws of Hawaii.

"No sale of lands for other than homestead purposes, except as herein provided, and no exchange by which the Territory shall convey lands exceeding either forty acres in area or \$5,000 in value shall be made. No lease of agricultural lands exceeding forty acres in area, or of pastoral or waste lands exceeding one thousand acres in area, shall be made without the approval of two-thirds of the board of public lands which is hereby constituted, the members of which are to be appointed by the governor, as provided in section 80 of this act, and until the legislature shall otherwise provide said board shall consist of six members and its members be appointed for terms of four years: *Provided, however*, That the commissioner may, with the approval of the said board, sell for residence purposes lots and tracts not exceeding three acres in area and that sales of Government lands may be made upon the approval of said board whenever necessary to locate thereon railroad rights of way, railroad tracks, sidetracks, depot grounds, pipe lines, irrigations ditches, pumping stations, reservoirs, factories, and mills, and appurtenances thereto, including houses for employees, mercantile establishments, hotels, churches, and private schools, and all such sales shall be limited to the amount actually necessary for the economical conduct of such business or undertaking: *And provided further*, That no exchange of Government lands

shall thereafter be made without the approval of two-thirds of the members of said board, and no such exchange shall be made except to acquire lands directly for public uses.

"Whenever twenty-five or more persons having the qualifications of homesteaders who have not theretofore made application under this act except as hereinbefore provided, shall make written application to the commissioner of public lands for the opening of agricultural lands for settlement in any locality or district, it shall be the duty of said commissioners, subject to the provisions of section 73a hereof, to proceed expeditiously to survey and open for entry agricultural lands, whether unoccupied or under lease with the right of withdrawal, sufficient in area to provide homesteads for all such persons as may be found to be properly qualified and capable, as hereinbefore provided, together with all persons of like qualifications who shall have filed with such commissioner prior to the survey of such lands written applications for homesteads in the district designated in said applications. The lands to be so opened for settlement by said commissioner shall be either the specific tract or tracts applied for or other suitable and available agricultural lands in the same geographical district, and, as far as possible, in the immediate locality of and as nearly equal to that applied for as may be available: *Provided, however,* That no leased lands under cultivation shall be taken for homesteading until any crops growing thereon shall have been harvested.

"It shall be the duty of the commissioner of public lands, subject to the provisions of section 73a hereof, to cause to be surveyed and opened for homestead entry a reasonable amount of desirable agricultural lands and also of pastoral lands in the various parts of the Territory for homestead purposes on or before January 1, 1911, and he shall annually thereafter cause to be surveyed for homestead purposes such amount of agricultural land and pastoral lands in various parts of the Territory as there may be demand for by persons having the qualifications of homesteaders; and in laying out any homestead the commissioner of public lands shall include therein any amount, not exceeding eighty acres in area of agricultural land and not exceeding one thousand acres of pastoral land, sufficient to support thereon an ordinary family; and before proceeding to survey and open for homestead entry any pastoral lands of the Territory of Hawaii the commissioner shall classify all such pastoral lands into two classes, the first class being all such lands as from their nature can be plowed and seeded to grass and other forage plants suitable for stock raising, and the second class being all other pastoral land which by reason of the nature of the soil and the topography of the country is such that it precludes the cultivation or improvement of the same as grazing lands. All pastoral lands which shall be classified as 'first-class pastoral land' shall be surveyed and opened for homestead entry in areas of not less than two hundred and not more than five hundred acres, and all such lands which shall be classified as 'second-class pastoral land' shall be surveyed and opened for homestead entries in areas of not less than five hundred acres nor more than two thousand acres.

"And it is provided that the commissioner, with the approval of the governor, may enter into a contract or agreement with any person, firm, or corporation having possession of such pastoral lands under a lease from the Territory of Hawaii for the continued possession of such lands after the expiration of such lease under terms and conditions to be fixed by the commissioner of public lands, with the approval of the governor, which contract or agreement shall cover the period following the expiration of such lease up to and until the homesteader or homesteaders shall take actual possession of such pastoral land under any form of homestead agreement. And all necessary expenses for surveying and opening any such lands for homesteads shall be paid for out of any funds of the Territorial treasury derived from the sale or lease of the public lands, which funds are hereby made available for such purpose.

"Nothing herein contained shall be construed to prevent said commissioner from surveying and opening for homestead purposes and as a single homestead entry public lands suitable for both agricultural and pastoral purposes, whether such lands be situated in one body or detached tracts, to the end that homesteaders may be provided with both agricultural and pastoral lands wherever there is demand therefor; nor shall the ownership of a residence lot or tract, not exceeding three acres in area, hereafter disqualify any citizen from applying for and receiving any form of homestead entry including a homestead lease.

"All lands in the possession, use, and control of the Territory shall hereafter be managed by the commissioner, except such as shall be set aside for public purposes as hereinafter provided. All sales and other dispositions of such land shall be made by the commissioner or under his direction, for which purpose, if necessary, the land may be transferred to his department from any other department by direction of the governor, and all patents and deeds of such land shall be issued from the office of the commissioner, who shall countersign the same and keep a record thereof. Lands

conveyed to the territory in exchange for other lands that are subject to the land laws of Hawaii, as amended by this act, shall, except as otherwise provided, have the same status and be subject to such laws as if they had previously been public lands of Hawaii. All orders setting aside lands for forests or other public purposes, or withdrawing the same, shall be made by the governor; and lands while so set aside for such purposes may be managed as may be provided by the laws of the Territory. The commissioner is hereby authorized to perform any and all acts, prescribe forms of oaths, and with the approval of the governor and said board make such rules and regulations as may be necessary and proper for the purposes of carrying the provisions of this section and the lands laws of Hawaii into full force and effect."

Sec. 5. That the said act as amended be, and hereby is, amended by adding a new section thereto, to be known as section 73a, and to read as follows:

"Sec. 73a. That the governor of Hawaii, by and with the consent and approval of the senate of the Legislature of the Territory of Hawaii, is hereby authorized and directed to appoint a commission, which is hereby created, to be known as the Hawaiian Homes Commission, hereinafter referred to as the commission, to consist of four citizens of the Territory of Hawaii, two of whom at least shall be persons of whole or part Hawaiian ancestry. The governor of Hawaii shall be the fifth member and ex-officio chairman of said commission. The members of said commission shall serve without salary and shall submit a report of their doings to the Legislature of Hawaii biennially.

"The said commission is hereby authorized and directed to provide for the use and disposition by and to persons of whole or part Hawaiian ancestry, in accordance with the provisions of this section, of the following-named public lands of the Territory of Hawaii, namely, the lands on the island of Hawaii known as Kamao-Puueo (eleven thousand acres more or less), in the district of Kau; Puukapu (fifteen thousand acres more or less), Kawaihae I (thirteen thousand acres more or less); and Pauahi (seven hundred and fifty acres more or less) in the district of South Kohala; Kamoku (five thousand acres more or less), and Nienie (seven thousand three hundred and fifty acres more or less), in the district of Hamakua; the lands of Humuula Mauka (fifty-three thousand acres more or less), in the district of Hilo; the lands on the island of Maui, known as Kahikinui (twenty-five thousand acres more or less), in the district of Kahikinui, and the Government remnants in the district of Kula (six thousand acres more or less); the lands on the island of Molokai, known as Palaa (eleven thousand four hundred acres more or less), Kapaakea (two thousand acres more or less), Kalamaula (six thousand acres more or less), Hoolehua (three thousand acres more or less), Kamiloa I and II (three thousand six hundred acres more or less), and Makakupala (two thousand two hundred acres more or less); the Government remnants in the land of Waimanalo (four thousand acres more or less), island of Oahu, excluding therefrom the cane lands, the military reservation, and the beach lands; and the Government remnants in the lands on the island of Kauai, known as Waimae (fifteen thousand acres more or less), Moloa (five thousand acres more or less), and Anahola (two thousand five hundred acres more or less).

"It is provided, however, that the provisions of this section shall not apply to any portion of the above-designated lands which may be within a forest reservation.

"And it is further provided that, as the demand and the necessity for the same shall arise, the commission shall from time to time select other public lands of the Territory of Hawaii of the same or similar quality as the lands herein specifically named, and the said lands when so selected and set apart shall be used for and devoted to the purposes of this section in the same manner and to the same extent as though specifically named herein.

"The foregoing-named public lands and any public lands hereinafter selected and set apart for the purposes of this section shall be administered and controlled by said commission, and shall be leased to persons of whole or part Hawaiian ancestry for a term of nine hundred and ninety-nine years, in tracts of not less than twenty acres and not to exceed eighty acres of second-class agricultural lands and or not less than two hundred acres and not to exceed five hundred acres of first-class pastoral land, and or not less than five hundred acres and not to exceed two thousand acres of second-class pastoral land for a rental of \$1 per year for each homestead, and upon condition that the lands be occupied, used and/or cultivated by the lessee as a home or farm, and upon the further condition that the lease shall be subject to cancellation and the lands held for lease to other persons of Hawaiian ancestry upon the failure of the lessee to occupy, use, and/or cultivate the same for a period of two years at any one time.

"It is provided, however, in case of such cancellation the value of the improvements on any such piece of land shall be determined by a board of three appraisers to be appointed by the governor, and the lessee's interest in said improvements shall be paid to such lessee by the commission from the Hawaiian home loan fund hereinafter authorized; and it is further provided that when any such piece of land shall be again



leased pursuant to the provisions of this section the succeeding lessee shall take such leased land and improvements, subject to a lien thereon in an amount equal to the total appraised value of said improvements to be repaid by such succeeding lessee in the same manner as in the case of an original loan as hereinafter provided.

"The commission shall provide a tract of pastoral land adjacent to each district in which agricultural leases are made, to be known as a community pasture on which the holders of agricultural leases may graze, not to exceed fifteen head of live stock.

"No lease made pursuant to the provisions of this section shall be transferable or assignable except as between tenants in common.

"Any portion of the said public lands hereby specifically set apart or which may hereafter be set apart for the purposes of this section not actually allotted to and occupied by such persons of Hawaiian ancestry pursuant to the provisions hereof may be leased as by law now provided, and every such lease shall contain a provision that the lands described therein shall be withdrawn from the operation of such lease when the same shall be actually required for the purposes of this section. And it is provided that, pending the actual use and occupation of such lands pursuant to the provisions of this section, the entire revenue derived from the said lands shall be paid into the Hawaiian home loan fund for use by the commission as hereinafter provided.

"That for the purpose of raising the necessary revenues for the accomplishment of the purpose of this section the land commissioner, with the approval of the governor and two-thirds of the land board, is hereby authorized and empowered to lease by sale at public auction the highly cultivated public lands of the Territory of Hawaii for a term not to exceed fifteen years, and any such lease sold under the provisions of this section shall not contain the withdrawal clause now provided for by law. From and after the approval of this act 30 per centum of the Territorial receipts derived from the rentals of such highly cultivated lands and water licenses shall be set apart in the treasury of the Territory of Hawaii and maintained as a special fund, to be known as the Hawaiian home loan fund. The said receipts shall continue to be paid into said fund until the aggregate amount of money so collected and paid into said fund shall amount to the sum of \$1,000,000. The moneys so deposited in such fund shall be used by the commission in making loans and advancements to lessees of land under this section, not exceeding \$3,000 to any one person, at a rate of interest not to exceed 5 per centum per annum for the purpose of assisting in the development of said lands and for the erection of dwellings and other farm improvements and the purchase of live stock and farming implements, the repayment to the fund of such loans or advances to be made by the lessees in annual payments not exceeding thirty in number. The said loans or advances shall constitute a first lien upon the said lease and other property of the lessee.

"For the purpose of providing the commission with the necessary funds with which to undertake and carry on any general water or other general development work which may not be charged directly to any such lessee, the legislature of the Territory of Hawaii is hereby authorized to insert in its next and succeeding public-loan acts an item or items sufficiently large to complete such general development work, and bonds may be issued as provided by law to the extent necessary to yield the necessary amount.

"The said commission shall pay into the treasury of the Territory from the said Hawaiian home loan fund, on the interest dates of any bonds that may be issued by the Territory for the purposes of this section, interest upon an amount equal to the par value of such bonds at the rate of interest specified in such bonds and also such sums annually on the second interest date and the same date each year thereafter during the term for which such bonds shall have been issued, so that the aggregate of such sums so annually paid will, compounded annually, at such rate of interest, equal at the expiration of such term such par value.

"The said commission is hereby authorized to employ an agricultural expert or experts upon such terms and for such salary as may be determined by the commission.

"It shall be the duty of the said agricultural expert or experts to assist and advise the Hawaiian colonies established pursuant to the provisions of this section in the best method of diversified farming and stock raising, and in all matters which will tend to successfully accomplish the purposes of this section.

"The salary of the said agricultural expert or experts shall be paid from the Hawaiian home-loan fund.

"The commission is hereby authorized and empowered to do all necessary acts and things in addition to those specifically authorized by this section to enable them to accomplish the purposes and objects hereof, and to make and issue all necessary rules and regulations for the accomplishment of the purposes and objects of this section, and from time to time to amend the same, which rules, when published, shall have all the force and effect of law.

"All necessary expenses incurred by the commission in the performance of its duties, pursuant to the provisions of this section, shall be paid from the Hawaiian home-loan fund upon vouchers approved by the chairman or such other person as may be designated by the commission.

"All acts or parts of acts, either of the Congress of the United States or the Territory of Hawaii, to the extent inconsistent with this section, are hereby repealed."

Sec. 6. That that portion of section 80 of said act, which reads "all officers appointed under the provisions of this section shall be citizens of the Territory of Hawaii" be, and hereby is, amended to read as follows: "all officers appointed under the provisions of this section shall be citizens of the Territory of Hawaii and shall have resided therein for at least three years."

Sec. 7. That the second, third, and fourth paragraphs beginning with the words, "the President of the United States," and ending with the words, "exceeds the sum or value of \$5,000," of section 88 of said act as amended by an act approved March 3, 1905, and as further amended by an act approved March 3, 1909, be, and hereby is, amended to read as follows:

"The President of the United States, by and with the advice and consent of the Senate of the United States, shall appoint two district judges, a district attorney, and a marshal of the United States for the said district, all of whom shall be citizens of the Territory of Hawaii and shall have resided therein for at least three years, and said judges, attorney, and marshal shall hold office for six years unless sooner removed by the President. The said court shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction over all cases cognizable in a circuit court of the United States, and proceed therein in the same manner as a circuit court, and the said judges, district attorney, and marshal shall have and exercise within the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges, district attorneys, and marshals of the district and circuit courts of the United States: *Provided, however,* That all persons appointed to office or to any lucrative position in the Territory of Hawaii by any such judge, district attorney, or marshal, or by the Attorney General of the United States shall be citizens of said Territory and shall have resided therein for at least three years.

"Writs of error and appeals to the said district court shall be had and allowed to the Circuit Court of Appeals for the Ninth Judicial Circuit in the same manner as writs of error and appeals are appealed from circuit courts to circuit courts of appeal, as provided by law, and appeals and writs of error may be taken to the Supreme Court of the United States from said district court in cases where appeals and writs of error are allowed from the district and circuit courts of the United States to the Supreme Court, and the laws of the United States relating to juries and jury trials shall be applicable to said district court. The laws of the United States relating to appeals, writs of error, removal of causes, and other matters and proceedings, as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii. Regular terms of said court shall be held at Honolulu on the second Monday in April and October, and special terms may be held at such times and places in said district as the said judges may deem expedient.

"The said district judges shall appoint a clerk of said court at a salary of \$3,500 per annum, and shall appoint a reporter of said court at a salary of \$1,800 per annum. The clerk of said district court, with the approval of the said district judges, shall appoint one deputy clerk at a salary of \$2,500 per annum, and a second deputy clerk at a salary of \$1,500 per annum."

Sec. 8. That section 92 of said Act, as amended by an Act approved May 27, 1910, be, and hereby is, amended to read as follows:

"Sec. 92. That the following officials shall receive the following annual salaries, to be paid by the United States: The governor, \$10,000; the secretary of the Territory, \$5,400; the chief justice of the supreme court of the Territory, \$8,000; the associate justices of the supreme court, \$7,500; the judges of the circuit courts, \$6,000; the United States district attorney, \$5,000; the United States marshal, \$4,000; and the governor shall receive annually in addition to his salary the sum of \$1,000 for stationery, postage, and incidentals, also his traveling expenses while absent from the capital on official business, and the sum of \$3,000 annually for his private secretary."

Sec. 9. That the said act as amended be, and hereby is, amended by adding a new section thereto, to be known as section 103a, and to read as follows:

"Sec. 103a. No person shall be employed as a mechanic or laborer upon any public work carried on in the Territory of Hawaii by the Government of the United States of America or any department thereof, whether the work is done by contract or otherwise, unless such person is a citizen of the United States or eligible to become a citizen."

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